

1
2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE EASTERN DISTRICT OF TEXAS

4 MARSHALL DIVISION

5 BISCOTTI INC.

) (

6) (CIVIL DOCKET NO.

7) (2:13-CV-1015-JRG-RSP

8 VS.

) (MARSHALL, TEXAS

9) (

10 MICROSOFT CORP.

) (June 5, 2017

11) (9:14 A.M.

12 TRANSCRIPT OF JURY TRIAL

13 BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

14 UNITED STATES DISTRICT JUDGE

15
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1 P R O C E E D I N G S

2
3 (Jury panel in.)

4 COURT SECURITY OFFICER: All rise.

5 THE COURT: Thank you. Be seated, please.

6 Good morning, ladies and gentlemen. Thank you for
7 being here.8 My name is Rodney Gilstrap, and I am the resident
9 United States District Judge here in the Marshall Division
10 for the Eastern District of Texas. I have lived in Marshall
11 since 1981. I practiced law here for 30 years before I was
12 appointed to the bench. I've been serving in this capacity
13 since 2011.14 And I'll make a confession to you, I was not born
15 in Texas; I was born in Florida. But I got here as fast as
16 I could. I came to Texas to go to law school and college.
17 Went to college first, obviously, at Baylor, and college at
18 Baylor Law School -- excuse me, law school at Baylor Law
19 School.20 I'm married. I have two grown children. And my
21 wife owns and operates a retail floral business here in
22 Marshall.23 Now, I tell you all those things because in a few
24 minutes, I'm going to ask each of you to give me the same
25 kind of information about yourselves, and I think you're

1 entitled to know as much about me as I'm about to find out
2 about each of you all.

3 We're about to engage in a selection of a jury in a
4 civil case involving allegations of patent infringement.
5 However, before we go any further, I'd like to briefly
6 review with you how we came to have a civil jury trial
7 system.

8 If you look at the first five books of the Old
9 Testament, the Pentateuch, you'll see that the ancient
10 Jewish nation -- nation impaneled juries for the purpose of
11 determining property ownership and property values. The
12 ancient Greeks developed and started using a jury system
13 about 1500 BC. The Romans, as they did with many things,
14 adopted the jury system from the Greeks. And the Romans
15 brought the jury system to what we now know is England about
16 the fourth century AD when they conquered that island.

17 So by the 12th century AD, jury trials had been a
18 part of the judicial system in England for over 800 years.
19 Then in the 12th century AD, a tyrannical king came to the
20 thrown of England known as King John, and he attempted to do
21 away with the right to trial by jury. And this, along with
22 other disputes, led to a confrontation between the king and
23 his nobles that threatened to put the country into civil
24 war. And that confrontation was resolved by the nobles and
25 the kings signing a document at a place called Runnymede,

1 resolving their disputes. And that document we know today
2 as the Magna Carta. And in that document, the right to
3 trial by jury was guaranteed to Englishmen as a part of
4 resolving that dispute with King John.

5 As a matter of fact, 28 of our 50 United States
6 have adopted into their state constitutions the exact
7 language from the Magna Carta guaranteeing the right to
8 trial by jury as a part of their respective state
9 constitutions.

10 So you can see that the concept and the tradition
11 of jury trials in civil cases was well ingrained in our
12 founding fathers who came to this country as British
13 colonists in settling America. And after a hundred -- more
14 than a hundred years of the jury system being exercised in
15 colonial America, the British crown, again, attempted to
16 restrict or do away with the right to trial by jury. This
17 time it was not King John, but it was King George the III.
18 And that led, along with other things, to the separation of
19 our country from England, the American Revolution and the
20 founding of the United States of America.

21 As a matter of fact, Thomas Jefferson, in writing
22 the Declaration of Independence, which sets forth the
23 various reasons why the British colonies should separate
24 from the mother country and from their own independent
25 nation, spells out specifically the king's attempt to

1 restrict and deny the right to trial by jury as one of the
2 precise reasons justifying our revolution and our separation
3 from England in the formation of the United States as a
4 separate and independent nation.

5 The right to trial by jury was recognized by our
6 founding fathers after our independence as a vital part of
7 our nation. And as a matter of fact, after the adoption of
8 the constitution, the first 10 amendments, which we all know
9 as the Bill of Rights, was quickly adopted thereafter. And
10 in those first 10 amendments to the constitution, you'll
11 find the Seventh Amendment. The Seventh Amendment
12 guarantees the right to every American to resolve their
13 disputes in a trial by jury, including those disputes in a
14 civil case.

15 So for over 125 years, because the Seventh
16 Amendment was ratified in 1791, so for over 225 years, every
17 American has had a constitutional right to have their
18 disputes in civil cases resolved by a trial by jury.

19 So by being here today and participating in this
20 process, each of you all are doing your part in a very real
21 sense to preserve, protect, and defend the constitution of
22 the United States.

23 I always tell people who show up, as you have, for
24 jury service this morning that in my personal view and
25 opinion, jury service is the second highest form of public

1 service that any American can render. In my opinion, the
2 highest form of public service are those young and men --
3 young men and women that wear the uniform of our country and
4 serve in our armed forces.

5 Now, ladies and gentlemen, the lawyers are going to
6 address you later this morning, and they're going to ask you
7 various questions. I want you to understand that they are
8 not seeking to pry unduly into your personal affairs, but
9 they are entitled to ask the questions they will ask for
10 purposes of securing a fair and an impartial jury to hear
11 the evidence in this case.

12 I don't know if it will happen today, it rarely
13 does, but occasionally, only occasionally one of the lawyers
14 will ask a question that someone on the jury panel perceives
15 as being so personal to them and so private that they are
16 not comfortable answering it in the front of their -- in
17 front of everyone else. I don't think that's likely to
18 happen, but if it should happen, you need to understand that
19 you have the option of simply saying in that circumstance,
20 I'd like to answer that in front of Judge Gilstrap. And if
21 that's your answer, then I'll provide an opportunity for you
22 to answer that question outside the presence of everyone
23 else. Again, that rarely comes up, but in case it does, I
24 want you to know that you have that option.

25 The important thing for each of you to remember is

1 that the answers that you should give to the questions asked
2 should be full, complete, and truthful. There are no wrong
3 answers to the questions as long as your answers are full,
4 complete, and truthful.

5 Now, the trial in this case is going to begin today
6 after we've selected the jury, and I anticipate that it's
7 going to last throughout this week and should finish on
8 Friday of this week. So for planning purposes, we should
9 begin today on the 5th, and I anticipate we will be finished
10 on Friday, June the 9th. If there's anybody on the jury
11 panel who could not possibly be available to serve if you're
12 selected for the jury in this case during that time period,
13 that is, if you have non-refundable airline tickets bought
14 and paid for to go somewhere, if you have a surgery
15 procedure scheduled for you or an immediate family member
16 that's dependent upon you, if you have a serious reason why
17 you could not be available if you were selected to serve,
18 then that's something I need to know about now. If there's
19 anybody on the panel who has that kind of a problem, if you
20 would raise your hands and keep them raised and let me make
21 a note of that.

22 Okay. And as I call your numbers you can keep your
23 hands down.

24 I see No. 15 and No. 21.

25 And I can't -- 25, thank you, sir.

1 Anybody else?

2 15, 21, and 25. I don't see any other hands.

3 All right. At this time, counsel, I'm going to
4 call for announcements in the case of Biscotti, Inc., versus
5 Microsoft Corp. This is Civil Case No. 2:13-CV-1015.

6 Counsel, as you make your announcements for the
7 record, please not only identify yourselves and the members
8 of your respective trial teams, but also identify any
9 corporate representatives that you have with you. And we'll
10 begin with the Plaintiff.

11 What says the Plaintiff?

12 MR. JONES: Thank you, Your Honor. My name is Mike
13 Jones. I represent the Plaintiff, Biscotti, and we're ready
14 to proceed, Your Honor.

15 THE COURT: All right. Introduce your trial team,
16 Mr. Jones.

17 MR. JONES: Thank you, sir.

18 I represent Biscotti with Mr. Adam Alper,
19 Mr. Michael De Vries, and Ms. Amanda Hollis.

20 And here at the very back of the courtroom, Your
21 Honor, is Dr. Matthew Shoemake who is our corporate
22 representative. He's our founder and president, Your Honor.

23 THE COURT: All right. Thank you, counsel.

24 MR. JONES: Thank you, Your Honor.

25 THE COURT: What says the Defendant?

1 MR. BETTINGER: Thank you, Your Honor.

2 Mike Bettinger representing the Defendant in the
3 case, Microsoft. And we are ready to proceed.

4 THE COURT: All right. Introduce your co-counsel.

5 MR. BETTINGER: Thank you, Your Honor.

6 To my left, your right, is Rick Cederoth and
7 Melissa Smith on behalf of Microsoft, Your Honor.

8 THE COURT: And do you have corporate
9 representation present?

10 MR. BETTINGER: Mr. Del Castillo is not here this
11 morning.

12 THE COURT: All right. Thank you, counsel.

13 MR. BETTINGER: Thank you.

14 THE COURT: As I've told you, ladies and gentlemen,
15 this is a patent case arising under the patent laws of the
16 United States. And what the Plaintiff, Biscotti, is
17 claiming in this case is that its patent was infringed by
18 the Defendant, Microsoft, and it's seeking money damages
19 because of that alleged infringement.

20 The Defendant, Microsoft, denies that it infringes
21 Biscotti's patent and contends that the patent is invalid.

22 Now, what I've just told you is a very informal
23 shorthand way of describing the case in layman's terms. I
24 know you've all seen the patent video this morning prepared
25 by the Federal Judicial Center, and having seen that, you

1 know more about patents than most people do when they appear
2 for jury service.

3 As I mentioned, the lawyers for both sides are
4 about to question the panel, seeking to gather information
5 that they need to exercise their peremptory challenges and
6 complete the process of selecting the jurors that will try
7 this case. I remind you again, there are no wrong answers
8 as long as your answers are full, complete, and truthful.

9 The lawyers' job here is to secure a fair and
10 impartial jury. They're not seeking to be nosy or intrusive
11 into your personal affairs. If for any reason the lawyers
12 ask a question that I think is improper, I will certainly
13 stop them and tell them that. But you should understand,
14 these are all experienced trial counsel. They are well
15 aware of the rules of the Court and the federal rules of
16 civil procedure, and I don't expect that to happen.

17 One thing I do want to call your attention to,
18 though, before the lawyers begin with their questions,
19 because some of them may ask you about your ability to apply
20 this if you're selected, is the burden of proof.

21 In a patent case, the jury is called upon to apply
22 two different burdens of proof. The jury may apply the
23 burden of proof known as the preponderance of the evidence,
24 as well as a second burden of proof known as clear and
25 convincing evidence. Again, those two burdens of proof are

1 the preponderance of the evidence and clear and convincing
2 evidence.

3 When responding to lawyers' questions about the
4 burden of proof, I need to instruct you that when a party
5 has the burden of proof on any claim or defense by a
6 preponderance of the evidence, it means that the jury must
7 be persuaded by the credible and believable evidence that
8 that claim or defense is more probably true than not true.
9 I'll say that again, more probably true than not true.

10 Sometimes this is talked about as being the greater
11 weight and degree of credible testimony. Let me give you an
12 example that I hope will be helpful.

13 I think all of you can see in front of me and in
14 front of our court reporter a statue of the Lady of Justice.
15 You'll notice that she holds the sword of justice in her
16 right hand, lowered at her right side, she's blindfolded,
17 and her left hand is raised holding the Scales of Justice.
18 Those Scales of Justice are exactly balanced and equal. And
19 that's the way both parties in this case start off. Exactly
20 the same, exactly equal.

21 During the course of the trial, you're going to
22 hear evidence, and that evidence, if you'll think about it
23 this way, is placed on one side or the other side of those
24 scales, depending on who offers it. And when all the
25 evidence is complete, the jury is going to be asked to

1 answer certain questions. And in answering those questions,
2 you should look to and think about the evidence that's been
3 placed on those scales during the course of the trial. And
4 if the party who has the burden of proof by a preponderance
5 of the evidence has those scales tip in their favor, even if
6 those scales tip ever so slightly, then they have met the
7 burden of proof of a preponderance of the evidence.

8 On the other hand, ladies and gentlemen, when a
9 party has the burden of proof of proving a defense by the
10 second burden of proof I mentioned, clear and convincing
11 evidence, that means that the jury must have an abiding
12 conviction that the truth of the party's factual contentions
13 are highly probable. And I'll say that again. An abiding
14 conviction that the truth of that party's factual
15 contentions are highly probable. This is a higher standard,
16 a higher burden of proof than the preponderance of the
17 evidence.

18 If you'll think about the same example I gave you,
19 the Scales of Justice for the parties in this case start off
20 exactly equal. During the course of the trial, the evidence
21 is presented, and it's placed on one side or the other of
22 those scales, depending on who presents it. When the trial
23 is complete and the jury deliberates to answer the questions
24 that will be asked of it, if a party has the burden of proof
25 on any defensive matter by clear and convincing evidence,

1 then to meet that burden of proof, those scales must tip in
2 their favor and they must tip definitely in their favor.
3 They must tip more than ever so slightly. And if they do,
4 then they have met that higher burden of clear and
5 convincing evidence.

6 Now, neither of these two burdens of proof should
7 be confused with a third burden of proof that you've
8 probably heard about in media and on television, and that is
9 a burden of proof known as beyond a reasonable doubt.
10 Beyond a reasonable doubt is a burden of proof applied in a
11 criminal case, and it has absolutely no application in a
12 civil case such as this. You should not confuse clear and
13 convincing evidence with evidence beyond a reasonable doubt.
14 It's not as high a standard as beyond a reasonable doubt,
15 but clear and convincing evidence is a higher standard than
16 the preponderance of the evidence.

17 Now, I give you these instructions in case some of
18 the lawyers in the case will ask you about your ability to
19 apply those two burdens of proof to the evidence that's
20 going to be presented during this trial if you're selected
21 as a juror in this case.

22 Now, before the lawyers address you, ladies and
23 gentlemen, I'm going to give you the opportunity to give me
24 the same kind of information about you that I gave you about
25 myself when we started. Each of you should have and on your

1 screens you'll see nine separate questions. I'm going to
2 ask each of the members of the panel to answer those
3 questions. And this is the way that we're going to do it,
4 ladies and gentlemen.

5 Our Court Security Officer, Mr. Johnston, is going
6 to bring a handheld microphone to each member of the panel.
7 We'll start with Panel Member No. 1, and we'll go through
8 everybody on the panel. When you get that handheld
9 microphone, if you will stand and if you will answer into
10 the mic so we can all hear you, those nine questions. Then
11 we'll pass the microphone to Panel Member No. 2, and we'll
12 go through the remaining members of the panel and get your
13 answers to those nine questions.

14 Also, I want you to understand that during the
15 remainder of the process, when the lawyers for the parties
16 address the panel, if they should ask specific questions to
17 anyone on the panel, then you should make sure that you
18 stand up before you answer and you should wait until you
19 have the microphone, and you should use the handheld
20 microphone when you answer the questions. Don't forget to
21 do that and start talking while you're seated before the
22 microphone gets there. This is a large room. We've got a
23 lot of people in it, and it's important that everyone hears
24 your answers, not only to these nine questions but to any
25 other questions you might be asked by counsel during the

1 remainder of the process.

2 So with those instructions, we'll start with panel
3 number -- Panel Member No. 1, Ms. Trahan, and we'll have the
4 microphone brought to you. If you'll answer those nine
5 questions for us, please?

6 JUROR TRAHAN: Okay. My name is Lucinda Trahan. I
7 have two children. I'm employed by the city of Linden as
8 their one and only utility building clerk. I've been there
9 since December 9th, 2016. I do have my high school
10 education, two years of college. No spouse. And no prior
11 jury service.

12 THE COURT: Thank you, ma'am. If you'll hand that
13 to Panel Member No. 2, Ms. Edney?

14 JUROR EDNEY: My name is Taira Edney. I'm from
15 Jefferson, Texas. I have no children. I'm working at
16 Pilgrim's Pride for the summer. I do have a high school
17 diploma, and I'm attending SFA right now. I don't have a
18 spouse. And I never did jury.

19 THE COURT: All right. Thank you.

20 No. 3, Ms. Cherry.

21 JUROR CHERRY: Good morning. My name is Bonita
22 Cherry. I live in Marshall, Texas. I have three children.
23 I am employed at Waskom ISD where I am middle school
24 principal. I've worked there since August of 2004. I have
25 high school, college, and a Master's degree. My spouse is

1 Johnny Cherry. He's employed with Rescar Tank Repair in
2 Longview, Texas, where he is a railcar repairman. He has
3 worked there for 21 years. And I have no prior jury
4 service.

5 THE COURT: Thank you, Ms. Cherry.

6 No. 4, Mr. Smith.

7 JUROR JERRY SMITH: My name is Jerry Smith. I
8 live in Upshur County. I have two girls.

9 I've been working for Applied Introduction
10 Technology for 10 years.

11 THE COURT: Mr. Smith, hold that microphone a
12 little closer, please, sir.

13 JUROR JERRY SMITH: And my wife -- I have a high
14 school diploma, two years of college.

15 My wife is a secretary at New Diana High School.
16 And she's been there about five years.

17 And I have no prior jury service.

18 THE COURT: Thank you, sir. If you'll hand that
19 mic to Panel Member No. 5, Ms. Chaney.

20 JUROR CHANEY: My name is Tammy Chaney. I live in
21 Gladewater. I have three children.

22 Work at Whataburger. Been there for a year and a
23 half. I did not graduate high school.

24 I do not have a spouse.

25 And I've never been on a jury before.

1 THE COURT: All right. Thank you.

2 Panel Member No. 6, Ms. Hodges.

3 JUROR HODGES: My name is Jacqueline Hodges. And I
4 have two children. I'm currently a homemaker. I used to be
5 a realtor and have high school and some college.

6 My husband is David Hodges. He works for Chevron
7 as an advisor in Nigeria. He's been with the company for
8 15 years.

9 And I have never served on a jury.

10 THE COURT: Thank you.

11 Panel Member No. 7.

12 JUROR JERGUSON: My name is Jill Jerguson. And I
13 live in Hallsville, Texas. I have three children.

14 I'm currently self-employed, build houses. My
15 husband and I build houses.

16 And I also was an RN for a while. I have high
17 school and, of course, a college degree for nursing.

18 My spouse's name is Roger Jerguson. And he's
19 employed at Strong Services, which is an oil and gas
20 company. And he works there as a hand. And he's worked
21 there for five years. And we also build -- he builds houses
22 with me, so he's doing that, too.

23 I was on a criminal case.

24 THE COURT: And where was that?

25 JUROR JERGUSON: It was here in Marshall.

1 THE COURT: In federal court?

2 JUROR JERGUSON: No. It was --

3 THE COURT: State court?

4 JUROR JERGUSON: Yeah.

5 THE COURT: Okay. Thank you. If you'll hand the
6 mic to Mr. Johnston, he'll take it around to Panel Member
7 No. 8, Mr. Garner.

8 JUROR GARNER: Yes, sir. My name is Tommy Garner.
9 I've got two kids.

10 Work at Flanders Electric in Longview. Been there
11 19 years. High school graduate.

12 My wife's name is Marsha Hess. She works for Beer
13 Wells here in Longview as second floor receptionist. She's
14 been there about 18, 19 years.

15 And I have been on the jury before. It was a civil
16 case.

17 THE COURT: And where was that?

18 JUROR GARNER: Here.

19 THE COURT: In Marshall or --

20 JUROR GARNER: Marshall.

21 THE COURT: In state court or federal court?

22 JUROR GARNER: Federal.

23 THE COURT: All right. Thank you, sir.

24 No. 9, Ms. Morgan.

25 JUROR MORGAN: My name is Brenda Morgan. I live in

1 Daingerfield, Texas. I have two children. I work at
2 Daingerfield Lone Star ISD, 20 years. I have a BS in
3 education.

4 My spouse's name is Jason. He works at Scot
5 Industries. He's been there 25 years.

6 And I've never had any prior jury service.

7 THE COURT: And what does your husband do at Scot
8 Industries?

9 JUROR MORGAN: He's a salesman.

10 THE COURT: Okay. Thank you, ma'am.

11 No. 10.

12 JUROR GUNSOLUS (CLONINGER): Good morning. My name
13 is Heather Gunsolus. I have four children. I am
14 self-employed. I have a food trailer. I've had that for
15 about eight months. I have a high school grad -- diploma,
16 I'm sorry.

17 My husband is Harold Gunsolus. He is a
18 superintendent for Ridged Industrial. He's worked there for
19 about six months.

20 And I have no prior jury service.

21 THE COURT: All right. Thank you, ma'am.

22 No. 11, Ms. Lankford.

23 JUROR LANKFORD: My name is Lauren Lankford. I
24 live in Pittsburg. I have two children. I work for Farmers
25 Insurance and have been with them for six and a half years.

1 I have a high school diploma and an Associates of Business.

2 My spouse is Joshua Lankford, and he works for
3 Priefert Manufacturing and has for 13 years as a shipping
4 supervisor.

5 And I have no prior jury service.

6 THE COURT: What do you do for Farmers Insurance?

7 JUROR LANKFORD: I sell casualty and property and
8 life insurance.

9 THE COURT: Okay. Thank you ma'am.

10 No. 12.

11 JUROR LAMBRIGHT: My name is Deanna Lambright. I
12 live here in Marshall. I have three children. Homemaker,
13 have been for almost all of my married life for 46 years. I
14 have a high school education.

15 My husband's name is Harold Lambright. And he
16 is -- both of us, I guess, you could say are retired. He
17 retired from Southern Pacific Railroad as a locomotive
18 engineer. And he retired after 30 years.

19 And I've -- I've served on a jury in the Harrison
20 County courthouse.

21 THE COURT: State court?

22 JUROR LAMBRIGHT: Civil, state court.

23 THE COURT: And when was that, ma'am?

24 JUROR LAMBRIGHT: Probably about three years ago.

25 THE COURT: Okay. Thank you.

1 No. 13, Mr. White.

2 JUROR WHITE: My name is Reagan White. I have two
3 children. I am currently employed at Halliburton Energy
4 Service, I think about eight months. I'm a cement operator.
5 I have some college.

6 My wife's name is Lindsey White, and she works at
7 Brookshire's Grocery Company. She is analyst at the
8 corporate office there in Tyler. And she's been there about
9 12 years.

10 And I have no prior service.

11 THE COURT: All right, sir. Thank you.

12 No. 14, Ms. Kelley.

13 JUROR KELLEY: My name is Karmen Kelley. I live in
14 Gilmer. I have two children. I work for Union Hill ISD.
15 Been there a year and a half. Prior to that, I was with
16 Upshur County for 38 years. I have a high school diploma.

17 My spouse's name is Jim Kelley. He works for the
18 City of Gilmer. He's been there about 15 years, and he
19 works for the street department.

20 And I have had no prior jury service.

21 THE COURT: What did you do for Upshur County?

22 JUROR KELLEY: I was the assistant auditor at one
23 time, assistant county treasurer, and IT director.

24 THE COURT: Thank you, ma'am.

25 All right. Next will be No. 15, Mr. Ellis.

1 JUROR ELLIS: My name is Jacob Ellis. I live in
2 Gilmer, Texas. No children. No wife.

3 I work at Capacity of Longview as a welder. I've
4 been there for six years. High school equivalency.

5 I've never served on a jury.

6 THE COURT: All right, sir.

7 No. 16, Mr. Ross.

8 JUROR ROSS: My name is Kenneth Ross -- my name is
9 Kenneth Ross. I live in the City of Gilmer. I have two
10 children and seven grandchildren.

11 I am semi-retired, I guess, restaurant manager and
12 owner. Right now I work part time for a medical
13 transportation, and I'm also a pastor of the Gladewater
14 Missionary Baptist Church. I've been working for about a
15 year currently, and I was -- been a pastor since 2010. I do
16 not have a high school diploma.

17 My wife's name is Rebecca Ross. She is a retired
18 homemaker. She's a granny now. That's full time. She's
19 been there for about 14 years, I guess.

20 And I have no prior jury service.

21 THE COURT: Thank you, sir. If you'll pass that
22 mic to No. 17, Ms. Alexander.

23 JUROR ALEXANDER: My name is Patricia Alexander.
24 No children. I'm from Gilmer. No spouse. I am a retired
25 elementary principal. Spent 30 years with that. And now

1 I'm presently the training coordinator at Walmart in Gilmer.
2 Been there almost six years.

3 THE COURT: And do you have any prior jury service,
4 ma'am?

5 JUROR ALEXANDER: Yes, sir, I -- I served in Upshur
6 County, child custody case.

7 THE COURT: How long ago?

8 JUROR ALEXANDER: Five years.

9 THE COURT: Thank you, ma'am.

10 No. 18, Ms. Miller.

11 JUROR MILLER: I'm Nora Gayle Miller. I have two
12 children. I work for Queen City ISD. I'm the director of
13 instruction and technology there. I've worked there 35
14 years. I do have a college degree.

15 My spouse's name is Harley Miller. He worked for
16 approximately 30 years at -- doing construction work.

17 I was -- I did serve on a jury last November, and
18 it was a criminal case.

19 THE COURT: And where was that?

20 JUROR MILLER: Cass County.

21 THE COURT: Thank you, ma'am.

22 And we'll take the mic around to Panel Member
23 No. 19.

24 JUROR AGUIRRE: My name is Leno Aguirre. I have a
25 daughter. I live here in Marshall. I work for Harris

1 Potteries. Been there 11 years. I do have a high school
2 and associate's degree in electrical instrumentation.

3 My wife's name is Lorena Aguirre. She owns her own
4 business, which she's a hair stylist. And she's been doing
5 that for eight years.

6 And I have never done -- have any prior jury
7 service.

8 THE COURT: Thank you, sir. If you'll hand that
9 mic to Panel Member No. 20.

10 JUROR LUCE: My name is Bill Luce. I have two
11 grown children. I'm employed at International Paper
12 Texarkana as a mechanic. Been there eight and a half years.
13 High school education.

14 My wife's name is Kathy. She stays at home.
15 And I have no prior jury service.

16 THE COURT: And where do you live, sir?

17 JUROR LUCE: Queen City, Texas.

18 THE COURT: Thank you. If you'll hand that to
19 No. 21, please?

20 JUROR SPURR: My name is Pamela Spurr. I live in
21 Marshall. I've got three children. I work for Morning
22 Light, Incorporated. I've worked there 17 years. I'm a
23 case manager. I supervise our day lab and do all the
24 company financials. I have a high school diploma. My
25 spouse's name is Bill Spurr. He's a retired teacher. And I

1 have no prior jury service.

2 THE COURT: Thank, ma'am. If you'll hand that to
3 No. 22?

4 JUROR BAUM: Steve Baum. Queen City, Texas. Got
5 four children. Work for Fluor Corporation, which is based
6 out at the mill at Domino, Texas. Been there three and a
7 half years. Bachelor's. My wife's name is Kelly. She's
8 also employed at Fluor Corporation. She's been there three
9 years also. And no jury service.

10 THE COURT: And what's your Bachelor's degree in,
11 and where did you get it?

12 JUROR BAUM: HSE, Health, Safety, and
13 Environmental, Southern Alabama.

14 THE COURT: Thank you, sir. If you'll pass that to
15 No. 23, Mr. Ford.

16 JUROR FORD: My name is Troy Floyd. I live in
17 Diana. I have two children. I work for Circle Z Pumping,
18 which is in the oilfield. I've been there three months. I
19 have a high school diploma and college. My wife's name is
20 Penny Ford. She works at the East Texas Professional Credit
21 Union as an insurance agent. She's been there about seven
22 years. And I've had no prior juries.

23 THE COURT: Thank you, sir. We'll take the mic
24 over to No. 24 on the panel, Mr. Smith.

25 JUROR PAUL SMITH: My name -- excuse me, my name is

1 Paul Smith. I live here in Marshall, Texas. I have three
2 children. I work at Marshall ISD. I'm in maintenance.
3 I've worked there now for 16 and a half years. I have two
4 years of college. My spouse's name is Charlotte Smith. She
5 works at St. Joseph's Catholic Church as the faith formation
6 director. She's worked there around 18 years. I have prior
7 jury service in a civil case here in Marshall.

8 THE COURT: And was that in state court?

9 JUROR PAUL SMITH: Yes, sir.

10 THE COURT: Thank you very much. If you'll pass
11 that microphone on to No. 25, Mr. Rodgers.

12 JUROR RODGERS: My name is Danny Rodgers. I live
13 in Ore City, Texas. No kids. Self-employed builder. My
14 wife -- oh, high school and trade school. My spouse works
15 at Good Shepherd Hospital in the billing, and she's worked
16 there for 12 years. And I've never served.

17 THE COURT: Thank you, sir. If you'll pass the mic
18 next to Panel Member No. 26?

19 JUROR HOLLIDAY: My name is Marcus Holliday. I'm
20 from here in Marshall, Texas. Been here about eight years.
21 I have three children. I work at East Texas Baptist
22 University. I'm the head athletic trainer there and an
23 adjunct instructor, again, starting my 9th year there. I do
24 have a Master's degree. My wife's name is Rachel Holliday.
25 She's an accountant. She works for Accounting Associates in

1 Bradenton, Florida, so my wife works from home part time.
2 And, again, she's been there for -- or worked for them for
3 more than 10 years. And I have no prior jury service.

4 THE COURT: Thank you, sir. If you'll pass the mic
5 to No. 27, Ms. Nicholson?

6 JUROR NICHOLSON: My name is Denise Nicholson. I
7 live in Diana, Texas. I have three children, and I work for
8 Cameron. It's a Schlumberger company. I do inventory and
9 office management there. My husband is Calvin Nicholson,
10 and he works for the Texas State Department of Health
11 Services. He's a planner. I have a high school education.
12 My husband's been with the State of Texas, the Health
13 Department for about 10 years. And I have no prior jury
14 service.

15 THE COURT: All right. Thank you, ma'am. Last
16 member of our panel, No. 28, Mr. Whitten?

17 JUROR WHITTEN: My name is Lance Whitten. I live
18 in Big Sandy. I have two children. I work for Ingersol
19 Rand - Trane in Tyler, been there for almost 22 years. The
20 last three years, I've been a production supervisor. Just
21 have a high school degree -- diploma. My wife's name is
22 Michelle Whitten. She works for ECI Advantage out of
23 Lindale. She's been there approximately 15 years. And I've
24 never served on a jury.

25 THE COURT: Thank you, sir.

1 All right. Thank you very much, ladies and
2 gentlemen.

3 Now, I need to say a couple more things to you
4 before I turn the questioning over to the lawyers. The
5 jurors that are selected to actually serve in this case will
6 serve in the role of the judges of the facts. And the
7 jurors selected in this case will make the sole
8 determination about what the facts are in this case.

9 Now, my job as the Judge is to rule on questions of
10 law, evidence, procedure, to maintain the decorum of the
11 courtroom, and oversee the flow of the trial.

12 Also, I want to say a couple things to you about
13 our judicial system that I hope will put things in a proper
14 perspective for you.

15 In any jury trial, besides the actual parties
16 themselves, the Plaintiff and the Defendant, there are
17 always three participants, the jury, the Judge, and the
18 lawyers.

19 With regard to the lawyers, it's important for each
20 of you to understand that our judicial system is an
21 adversary system, which means simply that during a trial,
22 each of the parties will seek to present their respective
23 cases to the jury in the very best light possible.

24 Now, it should be no surprise to any of you that
25 lawyers are frequently criticized in the public and in the

1 media, but the Court has observed that that often results
2 from a basic misunderstanding of our adversary system in
3 which the lawyers act as advocates for the competing
4 parties. And as an advocate, a lawyer is ethically and
5 legally obligated to zealously assert his or her client's
6 position under the rules of our adversary system. And by
7 presenting the best case possible on behalf of their
8 clients, the lawyers hopefully will enable the jury to
9 better weigh the relevant evidence and determine the truth
10 and arrive at a just verdict based on that evidence.

11 Our American system of justice, this adversary
12 system, has served our country well for over 200 years, and
13 America's lawyers have always been and continue to be an
14 important and indispensable part of the process.

15 So as we go forward with this trial, even though
16 it's possible that from time to time, I might growl or frown
17 at the lawyers, it's simply because I'm trying to make sure
18 that their advocacy doesn't get outside the boundaries of
19 our adversary system. But keep in mind, ladies and
20 gentlemen, they are simply doing their jobs, and it's
21 important for all of you to be aware of that as we go
22 forward.

23 Also, ladies and gentlemen, over the course of the
24 trial, I want you to understand that I am going to do my
25 very best to make sure that the jurors in this case have

1 absolutely no idea about what I think about the evidence
2 that's presented because it is the job of the jury to
3 determine the facts based on that evidence, and that is not
4 my job.

5 So you should not -- those of you that are selected
6 for the jury should not take any expressions that you see or
7 you think you see as coming from me as something to consider
8 in determining what the ultimate facts are in this case.

9 All right. With that, the counsel will now be in a
10 position to address the panel.

11 Mr. Jones, you may address the panel on behalf of
12 the Plaintiff. Would you like a warning on your designated
13 time?

14 MR. JONES: Yes, Your Honor, five minutes.

15 THE COURT: All right. You may proceed.

16 MR. JONES: Thank you, Your Honor.

17 Good morning, ladies and gentlemen.

18 First thing I want to do is to thank you on behalf
19 of both myself and Biscotti for your service as jurors.

20 I think Ms. Smith and I will agree today that this
21 is an important case. I think we will agree today that we
22 cannot resolve the issues in this case without your help.
23 And I thank each of you very much for your time and for your
24 service as jurors.

25 I would also like to follow Judge Gilstrap's

1 example and tell you just the same things about myself. My
2 name is Mike Jones. I'm a lawyer from Tyler, Texas. I've
3 practiced law in East Texas since 1977. My wife and I, Pam,
4 live in Tyler. We have two grown children, and we have
5 three grandchildren.

6 I want to also thank you for your help in filling
7 out the questionnaires for us before we started this
8 process. It is very helpful. It does streamline the
9 process.

10 I have a few more questions to ask you. Like Judge
11 Gilstrap said, it is not my intent to pry in any way. If I
12 ask you anything confidential, please tell me. If I ask you
13 anything you don't understand, please tell me that. But I
14 thank you very much for your time and for your patience with
15 me.

16 As the Court told you, this is a patent case.
17 Dr. Matthew Shoemake has spent his life developing
18 electronic technology. And he and another inventor obtained
19 a patent and contend in this case that that patent is
20 infringed by Microsoft. The case will really resolve around
21 three issues.

22 Now, we will present proof through four different
23 witnesses, and I'd like to ask you if you know any of those
24 witnesses. We will present proof through Dr. Matthew
25 Shoemake himself.

1 Anybody know anything about him from any source?

2 We will present proof from a Dr. Steve Wicker. Has
3 anybody heard of Dr. Wicker from any source?

4 We will present proof from a Dr. Ravi Dhar. Has
5 anybody heard of Dr. Dhar?

6 And finally, we will present proof from Dr. Ray
7 Perryman. Has anybody ever heard of Dr. Perryman before?
8 Anybody?

9 Okay. Thank you very much.

10 The first issue that Biscotti will present evidence
11 on in this case is that Microsoft's Xbox One products
12 infringe. Microsoft will contend that they do not.

13 In the questionnaire, you were asked have you or
14 somebody close to you or your employer ever been involved in
15 a patent dispute. And the vast majority of you answered
16 that you were unsure whether that was true or not.

17 Now, if I could, and I'll pick on you, if you don't
18 mind, since you're No. 1, Ms. Trahan, I assume by that
19 answer to the question that it means you don't know whether
20 or not someone close to you or your employer has ever been
21 involved in a patent dispute?

22 JUROR TRAHAN: That's correct. I've only been
23 employed for six -- six months there, so I don't know them
24 that well.

25 MR. JONES: Thank you. Thank you.

1 And I also assume from you that you don't know of
2 any past patent disputes that -- maybe a past employee
3 dispute you have been involved in, correct?

4 JUROR TRAHAN: I have no idea, correct.

5 MR. JONES: And if you'd just keep the microphone
6 for one more second, but I'll ask the panel in its entirety,
7 is her answer the same answer I get if I ask those questions
8 to you, that -- that that's the way you interpreted the
9 question? And that's where we are? Anybody feel
10 differently than that?

11 Thank you.

12 My next question to you, Ms. Trahan, would -- would
13 be this: Whether it involved an employer of yours or
14 whether it involved a close friend or not, do you have any
15 knowledge from any source, whatsoever, about any particular
16 patent dispute?

17 JUROR TRAHAN: About 20 years ago, I worked as a
18 transcriber for a court reporter, and she had a case with a
19 patent. And what I remember is, it was a 300-page
20 deposition that I had to type, and it was extremely boring.

21 MR. JONES: Thank you, ma'am. Thank you, ma'am.

22 I would -- I understand.

23 I would -- I would like to expand the question --
24 thank you for answering it.

25 I would now like to expand the question to the

1 whole panel and ask each of you to tell me if you have any
2 knowledge of any particular patent dispute like Ms. Trahan
3 did, anybody?

4 Let me ask another question that's very similar to
5 that, and that would be this: Do you -- any of you have any
6 knowledge or experiences in particular that as you hear
7 Judge Gilstrap tell you this is a patent case, you think of,
8 you know, that particular experience of mine or that
9 particular knowledge of mine is going to be very helpful to
10 me in deciding a patent dispute? Are any of you in that
11 situation? If you would, would you please raise your hand
12 and let me know?

13 Thank you.

14 Now, let's do this by rows. On the first row, how
15 many of you think there are too many lawsuits, anybody on
16 the first row think that?

17 Yes, ma'am. That would be Ms. Hodges, right?

18 JUROR HODGES: Right.

19 MR. JONES: Thank you. Let me drill down a little
20 deeper on that, if I could.

21 Do you think there are too many patent lawsuits?

22 JUROR HODGES: I really can't answer that. I don't
23 know how many patent lawsuits there are out there.

24 MR. JONES: Does the fact that you think there are
25 too many lawsuits in general, for whatever reason, does that

1 cause you as we start this case to lean one way or another?

2 JUROR HODGES: Absolutely not.

3 MR. JONES: Thank you. I appreciate your honesty.

4 Can I -- can I ask you one more question -- and I
5 apologize.

6 And as I look at this lawsuit issue, it seems to me
7 like people usually fall into two categories. There are
8 some people that think lawsuits are good because they're a
9 peaceful way to solve problems. There are some people that
10 think lawsuits are bad because judges and juries make
11 mistakes. Which camp would you say you fall into?

12 JUROR HODGES: Not necessarily either.

13 MR. JONES: Thank you.

14 JUROR HODGES: I think my opinion comes from -- I'm
15 a big news follower, and I just -- my problem is people seem
16 to be suing for everything, anything and everything. So
17 that's what I'm coming from.

18 MR. JONES: Thank you. I appreciate it. Thank you
19 so much. You've answered my questions.

20 I tell you what, let me go row by row on the two
21 camps. On the first row, is there anybody besides
22 Ms. Hodges that would say -- you didn't say that, you said
23 you didn't fall in either camp. But is there anybody on the
24 first row that would fall into the second camp that thinks
25 lawsuits are bad? Anybody on the first row?

1 How about the second row?

2 How about the third row over here, anybody falls
3 into that second camp, thinks lawsuits are bad?

4 Anybody on that row that thinks there are too many
5 lawsuits?

6 Yes, sir. Okay. Thank you.

7 That would be Mr. Ellis, and I would drill down
8 with you the same way I did with Ms. Hodges. Do you think
9 there are too many patent lawsuits?

10 JUROR ELLIS: I don't know much when it comes to
11 patent lawsuits, just in general lawsuits. Like, you know,
12 my coffee was hot type of thing.

13 MR. JONES: Thank you, sir.

14 Now, do -- does that cause you, as we start this
15 case, to lean toward one side or the other?

16 JUROR ELLIS: No.

17 MR. JONES: Thank you, sir. I appreciate that.

18 And I believe I also got a yes from Mr. Ross.

19 Mr. Ross, do you believe there are too many
20 lawsuits?

21 JUROR ROSS: Yes. Yes.

22 MR. JONES: I would -- I would, again, like I did
23 with the other jurors, drill down a little bit and ask the
24 question: Do you believe there are too many patent
25 lawsuits?

1 JUROR ROSS: I wouldn't -- wouldn't really know the
2 answer to that. I don't know how many patented lawsuits
3 there are.

4 MR. JONES: Does this feeling that you have that
5 there are too many lawsuits, do you lean one way or the
6 other as we start this case, sir?

7 JUROR ROSS: I'm sorry, could you repeat the
8 question?

9 MR. JONES: Yes, sir. Does this feeling you have
10 that there are too many lawsuits cause you to lean toward
11 one side or the other before we even start this case?

12 JUROR ROSS: No, sir.

13 MR. JONES: Thank you, sir. I appreciate it.
14 Thank you so much.

15 Keep -- keep going -- we got everybody that had a
16 response on the third row.

17 Let's go to the fourth row, is there anybody on the
18 fourth row that thinks lawsuits are bad and falls into that
19 second camp?

20 Anybody on the fifth row that thinks lawsuits are
21 bad and falls into that second camp?

22 Thank you very much.

23 Is there anybody, due to a moral or religious
24 conviction, that believes it is improper to file a lawsuit
25 like Biscotti has done in this case? Anybody feel that way?

1 Let me ask it a little differently, if -- this will
2 be a little bit of a hypothetical question. But if you were
3 in a situation where somebody owed you a large sum of money
4 and they refused to pay it to you, is there anybody on the
5 panel that has a conviction of any type that causes you to
6 say, I just would never sue them, even if it meant I just
7 had to forego the debt they owed me? Anybody in that
8 situation, just the way you feel about things?

9 Yes, sir, Mr. Ross, do you find yourself in that
10 situation?

11 JUROR ROSS: I think so, yeah. I mean, if they
12 can't pay, they can't pay. Just forgive, you know, forget.

13 MR. JONES: I got you.

14 JUROR ROSS: And go on with life.

15 MR. JONES: Thank you, sir.

16 In this particular situation, obviously, my client,
17 Biscotti and Dr. Shoemake, have come into Court and filed a
18 lawsuit. The fact that they would do that when you wouldn't
19 do that, does that cause you to lean against them in any
20 way?

21 JUROR ROSS: I really don't know how to answer that
22 question. No, I mean, I guess the truth will prevail, I
23 guess, is the -- but I couldn't tell you from what I know
24 about the case, just from the introduction, I -- I couldn't
25 tell you what would -- I don't think it would make me lean

1 one way or the other, no.

2 MR. JONES: And I understand, I think --

3 JUROR ROSS: My kind -- my kind of thing is -- is
4 you just -- you -- you hear -- like one lady, I think, said,
5 this is the news media and everything like that, it kind of
6 maybe -- it might distort people's minds about -- you know,
7 you hear somebody getting, you know, from McDonald's being
8 burned by coffee because they -- they put it to their mouth
9 before they let it cool off and win millions of dollars. I
10 think it's kind of frivolous and out of control.

11 MR. JONES: Thank you, sir. If I understand what
12 you're telling me, you're telling me I just have to decide
13 this case based upon the evidence, right, sir?

14 JUROR ROSS: Yes, sir.

15 MR. JONES: Couldn't ask for more. Thank you so
16 much, sir.

17 The next row, the fourth row, anybody fall into
18 that bad camp -- thinks lawsuits are bad?

19 And the fifth row, anybody think lawsuits are bad?

20 Thank you so much.

21 Now, has anyone read any press reports or seen any
22 media that dealt with the issue of patent lawsuits being
23 filed in Marshall, Texas? Anybody seen any press reports or
24 read anything about that?

25 How about patent lawsuits being filed in East

1 Texas? Has anybody seen anything about that?

2 Excuse me, did I see a hand? I'm sorry, I missed
3 it. Yes, sir? I believe that'd be Mr. Holliday?

4 JUROR HOLLIDAY: Yes. There was a big article in
5 the news a couple weeks ago or month ago.

6 MR. JONES: Okay. And from reading that article,
7 would that cause you, as you go into this lawsuit, to lean
8 one way or the other at all?

9 JUROR HOLLIDAY: No, not at all.

10 MR. JONES: Thank you, sir. I appreciate it.

11 The second issue that we will deal with in this
12 case is the fact that Microsoft says even if they infringe
13 these patents, that they owe nothing to Biscotti because the
14 patents are invalid. That will be a second issue that
15 you'll decide.

16 Now, like there are two camps with regard to
17 lawsuits, I think there are many times two camps with regard
18 to patents. Some people think patents are good because they
19 encourage information -- excuse me, encourage innovation.
20 And then there are other people that think patents are bad
21 because they add costs to technology.

22 Is there anyone, say, on the front row that falls
23 into that second category, you think patents are bad?

24 Anybody on the second row?

25 Third row?

1 Fourth row?

2 Fifth row?

3 Thank you.

4 Now, you were asked on your questionnaires if you
5 or someone close to you owned a patent. If I could,
6 Ms. Miller, I think she's over here in the -- Row 3.

7 Ms. Miller, I believe you told us that your brother
8 invented scaffolding?

9 JUROR MILLER: Yes, that's correct.

10 MR. JONES: Did he receive a patent?

11 JUROR MILLER: As of this date, no.

12 MR. JONES: Thank you. Is there anything about
13 that that would cause you to lean one way or another in this
14 lawsuit?

15 JUROR MILLER: No, sir.

16 MR. JONES: Thank you, sir -- thank you, ma'am.
17 Excuse me. I appreciate it.

18 Oh, while we're there, I did have one further
19 question for you. You indicated that you had worked at
20 Mr. Bill Hannon's law office at one time?

21 JUROR MILLER: Yes, sir.

22 MR. JONES: What type of work did you do there?

23 JUROR MILLER: I was paralegal/legal secretary.

24 MR. JONES: And what kind of law were you involved
25 in?

1 JUROR MILLER: Both criminal and civil.

2 MR. JONES: Thank you. I appreciate it.

3 And if we could, on Row 4, go to Mr. Troy Ford?

4 THE COURT: Mr. Jones, you're going to need to
5 speak up a little bit.

6 MR. JONES: Oh, okay. I'm sorry.

7 Mr. Ford, did your son obtain a patent?

8 JUROR FORD: Yes, sir. It's a patent pending now.

9 MR. JONES: Thank you, sir. And is there anything
10 about that experience that would cause you to lean one way
11 or the other as we start this lawsuit?

12 JUROR FORD: No.

13 MR. JONES: Thank you.

14 The Judge has defined, to some extent in his
15 instructions to us, the roles that we all play in a trial.
16 And obviously, the role of the Court is to instruct all of
17 us on what the law is. And he instructed us on what the
18 burden of proof was with regard to infringement and what the
19 burden of proof was with regard to invalidity. And I'm not
20 going to -- I'm not going to go anywhere toward redefining
21 those terms at all because the Court is the one that defines
22 what the burden of proof is in a case like this.

23 My question to you is this: The Court clearly
24 stated to you that the burden of proof for infringement is a
25 lesser burden than the burden of proof that Microsoft has to

1 meet in order to prove that Biscotti's patent is invalid.

2 Now, does anybody on the jury panel think that
3 that's unfair, that their burden of proof with regard to
4 invalidity is higher than our burden of proof with regard to
5 infringement? Anybody think that's unfair on the first row?

6 Second row?

7 Third row?

8 Fourth row?

9 Fifth row?

10 The third issue in this case that the jurors will
11 contend with that are selected is that Microsoft contends,
12 even if they infringe the patent and even is the -- even if
13 the patent is valid, that they do not owe the amount of
14 money and damages that will be discussed in Biscotti's
15 evidence.

16 Now, in the questionnaire, you were asked if
17 damages in lawsuits are too high today.

18 If we could, Mr. Smith, on Row 1, sir?

19 JUROR JERRY SMITH: Yes, sir.

20 MR. JONES: I would like to drill down a little bit
21 with you in connection with that question.

22 Do you believe that damages in patent cases are too
23 high?

24 JUROR JERRY SMITH: Not to me, patent cases, but
25 some cases, I believe, it's too high.

1 MR. JONES: I'd like to ask you, again, another
2 question about proof. If the evidence in this case showed
3 that Micro -- Microsoft owed nothing to Biscotti and you saw
4 proof of that, could you find that?

5 JUROR JERRY SMITH: I'm pretty sure I can with the
6 evidence.

7 MR. JONES: Sure. On the other hand, if the
8 evidence in this case proved to you that Biscotti was owed
9 many millions of dollars, could you find that?

10 JUROR JERRY SMITH: With proof of evidence.

11 MR. JONES: Thank you. So whatever the evidence
12 proved would be what you would find; is that right, sir?

13 JUROR JERRY SMITH: Yes, sir.

14 MR. JONES: Thank you, sir. Appreciate it. Thank
15 you.

16 JUROR JERRY SMITH: Thank you.

17 MR. JONES: First row, is there anybody that thinks
18 damages in patent cases are too high on the first row?

19 Second row? See anybody on the second row thinks
20 damages in patent cases are too high?

21 Third row, anybody think damages in patent cases
22 are too high?

23 Fourth row?

24 Fifth row?

25 Mr. -- Mr. Smith has just told me that whatever the

1 evidence showed would be what he would find. Is that where
2 we are -- I'm not trying to get anybody to commit to any
3 figure in evidence. All I'm asking is whatever the evidence
4 shows with regard to damages, whatever was proven to you, if
5 that's what you find, do y'all sit in the same situation as
6 Mr. Smith?

7 Thank you.

8 Before today was there -- yeah, before today and
9 before the questionnaires, was there anyone that had not
10 heard of Microsoft?

11 Is there anyone, when they really think about
12 things right now, that thinks, you know, Microsoft is so
13 famous, Microsoft has such smart employees, Microsoft is so
14 advanced technologically, that I just -- I just don't
15 believe -- it's hard for me to believe as I sit here today
16 that they would infringe the patent of a small company like
17 Biscotti? Does anybody feel that way?

18 It's fine if you feel that way. I'd just like to
19 know. Does anybody feel like that? Am I missing anybody?

20 Does anybody know any of Microsoft's attorneys, and
21 their attorneys, I believe, are Ms. Melissa Smith, Mr. Gil
22 Gillam, Mr. Bobby Lamb, and they're all from Marshall. Does
23 anybody know any of them?

24 Anybody know Mr. Michael Bettinger, Ms. Irene Yang,
25 Mr. Richard Cederoth, Mr. Nathaniel Love, Mr. Gwen Stewart,

1 Mr. Seth Reich, or the law firm of Sidley Austin, anybody
2 know any of them?

3 Before you came today and before you saw your
4 questionnaires, did any of you -- had you ever heard of
5 Biscotti, seen any media reports, press reports, heard
6 anything about the company Biscotti?

7 Keeping in mind as I just said before, we would all
8 agree, I think, that Microsoft is famous; nobody knows
9 Biscotti. Is there anything about that situation that makes
10 Biscotti start off behind in this case, the fact that
11 everybody knows Microsoft and nobody's heard of Biscotti?
12 Does that cause Biscotti to start out a little bit behind in
13 this case in anybody's mind? Anybody?

14 Thank you.

15 You were asked in the questionnaire about video
16 games, and the reason you were asked that is because this
17 case will involve a Microsoft product, a gaming console
18 known as Xbox One. You were also asked whether you own a
19 video game console or what type you owned.

20 I would like to change that question a little bit.
21 Start with the first row, how many of you personally play
22 video games on, say, an Xbox One, a PlayStation, or anything
23 like that? On the first row, how many of you actually play
24 video games yourself, not just own one and your children may
25 use it, but you say, I play video games? On the front row,

1 anybody play video games?

2 Yes, ma'am, got two. No. 1 and No. 2.

3 Ms. Trahan?

4 JUROR TRAHAN: My son owns almost all of those, and
5 so, yes, I've played in the past. I haven't recently.

6 MR. JONES: Thank you.

7 Just one more question. Do you consider yourself
8 good at it?

9 JUROR TRAHAN: No.

10 MR. JONES: Okay. Thank you.

11 JUROR TRAHAN: He beats me every time.

12 MR. JONES: Okay. Thank you, ma'am.

13 Ms. Edney, do you play video games yourself?

14 JUROR EDNEY: I did as a teenager growing up.

15 MR. JONES: Do you consider yourself good at it?

16 JUROR EDNEY: No.

17 MR. JONES: Thank you. I appreciate that.

18 If we go to the second row, how many of you
19 personally play video games?

20 Thank you.

21 Mr. White? And I would just ask you, sir, do you
22 play them so much that you consider yourself good at it?

23 JUROR WHITE: No, my children beat me all the time.

24 MR. JONES: Thank you, just play with your
25 children?

1 JUROR WHITE: Yes.

2 MR. JONES: Thank you, sir.

3 If we could go to the third row, do any of you
4 personally play video games?

5 Thank you.

6 Mr. Ellis? The same question to you, sir, do you
7 play them so much you consider yourself good at them?

8 JUROR ELLIS: Play them about six times a week.

9 MR. JONES: Thank you. So you're pretty good?

10 JUROR ELLIS: Yes.

11 MR. JONES: Thank you, sir. I appreciate it.
12 Thank you for your answer.

13 Go to the next row, how many of you personally play
14 video games?

15 Nobody?

16 And the last row, how many of you personally play
17 video games?

18 I think we have Mr. Whitten. Yes, sir?

19 JUROR WHITTEN: Yeah, I play video games two or
20 three times a week. I have both PlayStation and Xbox.

21 MR. JONES: Thank you, sir.

22 And I presume you're pretty good at it?

23 JUROR WHITTEN: Well, for my age group I think I'm
24 pretty good.

25 MR. JONES: Thank you, sir. I appreciate it.

1 Now, who on the panel knows the difference between
2 the gaming console by Microsoft known as Xbox --

3 THE COURT: You have five minutes remaining,
4 counsel.

5 MR. JONES: Thank you, sir.

6 -- and the Xbox One, how many of you would know the
7 difference between the two. Anybody?

8 Yes, sir. Okay. And that would be Mr. Ellis,
9 right?

10 JUROR ELLIS: Yes.

11 MR. JONES: And Mr. Whitten?

12 JUROR WHITTEN: What was the question again? I
13 didn't hear it.

14 MR. JONES: Yeah, how many of you would know the
15 difference between the Xbox and the Xbox One?

16 Okay, Mr. Whitten, thank you, that's all I needed
17 to know. I appreciate it.

18 How many of you on the panel have used an
19 application called Beam, anybody?

20 Who on the panel has used an application known as
21 Twitch?

22 I have two final questions that I would just ask
23 you. The first one is this: Is there anybody on the panel
24 that after hearing what Judge Gilstrap said and after
25 hearing what I said says, you know, I know something about

1 this case, this is déjà vu or I've heard something about
2 this? Anybody sitting there and say, I know something about
3 this, can't maybe remember where, but I have some knowledge
4 about this case? Any of those issues from any source?

5 Second one, final question is this: Whether I
6 asked it or not, is there anyone out there as you sit there,
7 you say, Mr. Jones, you need to know something, there's
8 something about my experiences, whatever it is, I'd be a
9 great juror in many cases, but for some reason in this case,
10 I just can't be a fair juror to Biscotti? Anybody sit in
11 that situation?

12 Thank you so much for your patience with me. I
13 appreciate it to no end. I look forward to exploring this
14 case with those of you chosen as jurors. Thank you.

15 THE COURT: All right. Defendant may now address
16 the panel.

17 Would you like a warning on your time?

18 MS. SMITH: Your Honor, I'd like a five-minute
19 warning, please?

20 THE COURT: All right. You may proceed, Ms. Smith.

21 MS. SMITH: Thank you, Your Honor.

22 May it please the Court.

23 Good morning, ladies and gentlemen. Again, my name
24 is Melissa Smith. And I, along with my colleagues, who
25 you've already met this morning, we represent Microsoft.

1 I'm going to join Mr. Jones in thanking you for
2 your service. I -- I read your questionnaire, and I
3 listened to you closely this morning. Some of you have come
4 from Gladewater and Gilmer and Linden. We've had some awful
5 weather lately, and I anticipate we'll have a little bit
6 more this week, so I know it's kind of a treacherous drive.

7 I also know, and Microsoft knows, that every hour
8 that you spend in this courtroom is certainly an hour that
9 you could be with your friends and your family and your
10 work.

11 And I'll tell you one thing, Microsoft probably
12 doesn't want to be in this courtroom any more than some of
13 you do, but it is an important case, and so we appreciate
14 your time.

15 Now, you all have been generous in providing
16 information both in your questionnaires to Mr. Jones this
17 morning and to the Court, and so I'm going to do a little
18 bit of that as well before I question you individually.

19 I, like Judge Gilstrap, graduated from Baylor Law
20 School. I did that almost -- or a little over actually
21 20 years ago. I -- about three days after graduation I
22 moved up the road to Jefferson, Texas, and I've lived there
23 ever since. I got a job about a week later practicing on
24 this Marshall courthouse square, and I've been practicing in
25 Marshall for the last 20 years.

1 At first, like most young lawyers, I kind of had to
2 take every single case that came in the door, and that's
3 what I did for a living. But I've paid my dues, and I can
4 be a little bit more selective now, to tell you the truth,
5 and that's why I'm representing Microsoft today. I chose to
6 represent Microsoft in this lawsuit.

7 My law office is Gillam and Smith, as Mr. Jones
8 told you. I practice with a law partner named Gil Gillam.
9 He has been my law partner for each of those 20 years I've
10 been practicing, which is kind of unusual in this day and
11 age.

12 And on a personal note, I have -- I'm married. I
13 have a six-year-old baby boy. Not so much a baby anymore.
14 And I have four-year-old girl and. So that's what I spend
15 my time doing when I'm not at the office practicing law.

16 Now, Judge Gilstrap has given me about three
17 minutes to introduce you further to Microsoft and to tell
18 you a little bit about our case today.

19 It's a pretty easy -- pretty easy to introduce
20 Microsoft, to tell you the truth. Mr. Jones asked you all
21 if you knew who Microsoft was, everybody knew who Microsoft
22 was. And that's because Microsoft has been a technology
23 company since the 1970s. In the 1970s I certainly wasn't
24 thinking about computers and certainly wasn't thinking about
25 gaming, but they've been doing it the whole time.

1 They made the Xbox, which you're going to hear, if
2 you're lucky enough to be chosen for this jury, you're going
3 to hear a whole lot about the Xbox. They made that back in
4 2001. And you're also going to hear a lot about
5 videoconference calling or video calling. And they've been
6 doing that even before the Xbox back starting in 1996.

7 Microsoft actually employs 50,000 engineer
8 inventors. And all day, every day Microsoft is investing in
9 technology and -- and really just figuring out what
10 consumers, like each of you, what you guys want next.

11 Now, some of the Microsoft employees that are
12 actually behind the Xbox from the beginning are going to
13 come into the courthouse this week, and they're going to
14 tell you how the Xbox came to be. But for now, quite
15 simply, I will tell you that Microsoft's position in this
16 lawsuit this week regarding the Xbox and all of its features
17 is this: We did it first, we did it on our own, we did it
18 very differently, and we did it better.

19 Now, it's time to hear a little more, and you're
20 almost through this 'a little more' -- more about you all.

21 Now, this first question probably won't surprise
22 any of you in the room. You all know Microsoft. So my
23 question is this: Is there anybody out there that came into
24 this courtroom today with a negative view of Microsoft?
25 Anyone on Ms. Trahan's row, juror No. 1, anyone on the first

1 row that came in without hearing any of the evidence or
2 anything about the case we're going to talk about with a
3 negative view of Microsoft?

4 Mr. Garner -- Mr. Garner is the second row. I'm
5 kind of making you, Ms. Trahan and Mr. Garner, the leaders
6 on the rows. Anyone on that second row that has a negative
7 opinion or anything you think -- I'm here representing
8 Microsoft -- you think you might want to tell me before I
9 select you to be on my Microsoft jury?

10 These -- these other rows, is there anybody out
11 there that needs to talk to me about a negative feeling
12 about Microsoft or something about Microsoft that's -- I'd
13 want to know before we try this case?

14 Thank you all.

15 All right. You are all familiar with Microsoft.
16 So my next question is this, and we'll begin with
17 Ms. Jerguson, Juror No. 7, same row. Have you used
18 Microsoft products?

19 JUROR JERGUSON: Yes.

20 MS. SMITH: Can you tell me a little bit about
21 that?

22 JUROR JERGUSON: Well, I have Windows 7.

23 MS. SMITH: Okay. Has it been working all right
24 for you?

25 JUROR JERGUSON: Yes.

1 MS. SMITH: Okay. No complaints?

2 JUROR JERGUSON: No, no complaints.

3 MS. SMITH: Okay. Did you have a prior version
4 or --

5 JUROR JERGUSON: Yes. I had XP, I had -- let's see
6 what I had -- we had the XP, and then I have the Windows 7.

7 MS. SMITH: Thank you, ma'am. Thank you, ma'am.

8 Ms. Hodges, Ms. Chaney, do either of you have
9 any -- Ms. Chaney, you're nodding your head no, so I want to
10 talk to you first. Do you have any experience with using
11 Microsoft products?

12 JUROR CHANEY: No, I don't.

13 MS. SMITH: Okay. Thank you.

14 Ms. Hodges, how about you?

15 JUROR HODGES: Yes. With my computer, and then my
16 son owned an Xbox.

17 MS. SMITH: Okay. And I may want to talk to you
18 about that Xbox in a few minutes.

19 JUROR HODGES: Okay.

20 MS. SMITH: Thank you for now.

21 JUROR HODGES: All right.

22 MS. SMITH: Mr. Smith, any experience with
23 Microsoft products?

24 JUROR JERRY SMITH: No, ma'am, I don't have -- I
25 don't have a lot of time to play games.

1 MS. SMITH: All right. What about -- what about --
2 what about not just playing games? What about Microsoft
3 Office --

4 JUROR JERRY SMITH: I don't even have nothing like
5 that in my house. My kids keep it in their rooms, so I
6 don't even see stuff like that.

7 MS. SMITH: Okay. Fair enough. Ms. Cherry, how
8 about you? Do you have any experience using Microsoft
9 products?

10 JUROR CHERRY: Yes. On my job, I use Microsoft
11 Word and Windows.

12 MS. SMITH: Okay. Any complaints about Word and
13 Windows that I need to know about?

14 JUROR CHERRY: No.

15 MS. SMITH: Thank you, ma'am.

16 Ms. Edney, how about you? Tell me a little bit
17 about your use of Microsoft products.

18 JUROR EDNEY: I use Word Microsoft, and I have
19 Windows 10.

20 MS. SMITH: I figured you have a laptop, don't you,
21 for school?

22 JUROR EDNEY: Yes.

23 MS. SMITH: What brand laptop do you use?

24 JUROR EDNEY: PT.

25 MS. SMITH: Okay. Thank you, ma'am.

1 JUROR EDNEY: Thank you.

2 MS. SMITH: Ms. Trahan, you're the last one on the
3 row. What kind of experience do you have with Microsoft
4 products?

5 JUROR TRAHAN: Yeah, we have it at the office, 10,
6 and I have a laptop.

7 MS. SMITH: Do you do -- you do some work --
8 financial work at all?

9 JUROR TRAHAN: Yes. In our accounting system at
10 the city.

11 MS. SMITH: Is Microsoft -- do you use
12 spreadsheets?

13 JUROR TRAHAN: I don't know how it's connected to
14 that. I don't know.

15 MS. SMITH: Well, then I assume you don't have any
16 complaints if you don't -- you don't remember?

17 JUROR TRAHAN: No.

18 MS. SMITH: Thank you, ma'am.

19 All right. Everyone on the back row, what --
20 Mr. Garner, do you have any experience using Microsoft
21 products?

22 JUROR GARNER: Yes, I do.

23 MS. SMITH: All right. What products are you using
24 of ours?

25 JUROR GARNER: Basically Flanders computer is

1 Microsoft Word and Excel.

2 MS. SMITH: Thank you, sir. Just by -- by showing
3 your hands, Juror No. 9, Ms. Morgan -- Ms. Morgan,
4 Ms. Gonsolus, Ms. Lankford, Ms. Wright -- Lambright, Mr.
5 White, and Ms. Kelley, and any of you by show of hands have
6 experience using Microsoft Word, Microsoft Office? Is that
7 everyone but Ms. Lambright? Has that experience all been
8 consistent with the experience of the other jurors pretty
9 good?

10 All right. Now, I want to turn your attention to
11 another topic. You haven't heard much about it lately, but
12 you're going to hear a lot about in the case if you're lucky
13 enough to be chosen, and that's video calling.

14 So what I want to know from the first row, from
15 Ms. Trahan's row, is does anybody make video calls? Anybody
16 on the first row make a video call? I thought you were
17 about the right age, Ms. Edney, that you might be doing
18 that. Can you -- Ms. Edney, can you tell me what -- what --
19 what you're doing that on or what app you're using?

20 JUROR EDNEY: There's this new app called Airtime.

21 MS. SMITH: Okay.

22 JUROR EDNEY: I just started using that back in
23 April or May. I haven't used it lately, but I usually use
24 it to talk to my friends.

25 MS. SMITH: Okay. Have you used something before

1 that one, or is that the first app you used?

2 JUROR EDNEY: When I purchased my iPhone, I got --
3 I used FaceTime --

4 MS. SMITH: FaceTime.

5 JUROR EDNEY: -- sometimes.

6 MS. SMITH: Thank you, ma'am.

7 JUROR EDNEY: Thank you.

8 MS. SMITH: All right. Ms. Trahan, are you doing
9 some video calling?

10 JUROR TRAHAN: Yes. And it's mostly my daughter
11 calling me, and I have no idea what the app is.

12 MS. SMITH: Okay. Fair enough. Fair enough. Does
13 your daughter live away -- far away?

14 JUROR TRAHAN: Yes, she lives in Utah.

15 MS. SMITH: Okay. Thank you, ma'am.

16 All right. Mr. Garner's row, anyone -- Mr. Garner
17 is shaking his head no. Anyone -- Ms. Morgan, Ms. Gonsolus
18 -- you're Gonsolus -- I am so sorry.

19 Juror No. 10, what are you doing as far as video
20 conferencing?

21 JUROR GUNSOLUS (CLONINGER): With my previous job,
22 corporate sales for forklifts --

23 MS. SMITH: Okay.

24 JUROR GUNSOLUS (CLONINGER): -- we did a lot of
25 Skyping back and forth to our Dallas branch and also

1 FaceTime with my daughter when I'm out of town -- or was out
2 of town.

3 MS. SMITH: Okay.

4 JUROR GUNSOLUS (CLONINGER): But other than that...

5 MS. SMITH: Thank you, ma'am. Thank you.

6 Ms. Lankford, did I see a hand from you? What type
7 of video calling are you doing?

8 JUROR LANKFORD: I use the Skype app for families
9 in other states, and then I've also used one that was like
10 you can use when you're in a different country, but I don't
11 remember the name of it.

12 MS. SMITH: Thank you, ma'am. Ms. Lambright,
13 Mr. White, Mrs. Kelley -- Mr. White, you're shaking your
14 head yes? Juror No. 13, what kind of video calling are you
15 doing?

16 JUROR WHITE: I usually use FaceTime or Skype.

17 MS. SMITH: Okay. Thank you, sir. And what -- let
18 me ask you one more question. When you're using FaceTime
19 and Skype, what kind of device are you using to do that?

20 JUROR WHITE: With FaceTime, my -- my cell phone.
21 And with Skype, on the computer.

22 MS. SMITH: Okay. And -- and I didn't -- thank
23 you, sir. I appreciate it.

24 And I failed to ask Ms. Lankford, when you're doing
25 your video calling, what type of device are you doing it on?

1 JUROR LANKFORD: On my cell phone.

2 MS. SMITH: Thank you, ma'am.

3 And, Ms. Kelley, did you have any experience in
4 video -- video calling?

5 JUROR KELLEY: No.

6 MS. SMITH: Okay. Anyone on these back rows use
7 video calling a bit? Okay. We've got Mr. Ross and Ms.
8 Alexander and Juror No. 18, as well, Ms. Miller. Start with
9 Ms. Miller.

10 JUROR MILLER: Do I need to stand?

11 Yes. We use Skype on regular laptop. We use
12 FaceTime on our iPhone. We also Viber and WhatsApp.

13 MS. SMITH: Wow, you're doing a lot. Who are you
14 calling? Do you have a lot of family out of state.

15 JUROR MILLER: I have a daughter in Guatemala.

16 MS. SMITH: That makes sense. Thank you. Thank
17 you, ma'am.

18 Ms. Alexander, did you ever use video calling at
19 work in the school district?

20 JUROR ALEXANDER: No, we didn't have that
21 technology. I retired in 2002.

22 MS. SMITH: All right. That -- that qualifies as
23 not a -- not a good question. I apologize.

24 JUROR ALEXANDER: That's okay. Skype and FaceTime.

25 MS. SMITH: Thank you, ma'am.

1 And, Mr. Ross, what are you doing?

2 JUROR ROSS: I just normally -- my kids will call
3 me with my grandkids and like stuff like that and to
4 aggravate my wife.

5 MS. SMITH: Oh.

6 JUROR ROSS: Yeah. She'll be in the other room,
7 and I'll call her.

8 MS. SMITH: You'll call --

9 JUROR ROSS: Yeah --

10 MS. SMITH: You'll use --

11 JUROR ROSS: -- just to aggravate her. Yeah,
12 couldn't live without it.

13 MS. SMITH: Thank you, sir. I appreciate that.

14 All right. There were a couple of you -- before we
15 completely leave the topic of Microsoft products, there are
16 a couple of you, I believe, who had Xboxes, Mr. Ellis; is
17 that correct? What kind of Xbox do you have?

18 JUROR ELLIS: I have the original Xbox, the Xbox
19 360, and the Xbox One.

20 MS. SMITH: That is exactly what we want to hear,
21 sir. We like to hear that. Tell me what -- I'm not quite
22 finished with you yet. Tell me what you use your Xbox for
23 other than gaming?

24 JUROR ELLIS: Netflix or Hulu, other than gaming.

25 MS. SMITH: Did you have any idea that your Xbox

1 could make a video call?

2 JUROR ELLIS: No, I didn't.

3 MS. SMITH: Have you -- so I assume you've never
4 seen anyone use it to make a video call?

5 JUROR ELLIS: No.

6 MS. SMITH: Thank you, sir.

7 Ms. Lankford, did you have an Xbox in the house?

8 JUROR LANKFORD: Yes.

9 MS. SMITH: Okay. And you have children; is that
10 correct?

11 JUROR LANKFORD: Yes, ma'am.

12 MS. SMITH: Tell me -- tell me how you guys are
13 using your Xbox.

14 JUROR LANKFORD: My son uses it for gaming. The
15 Xbox 360 is all that he has other than the PlayStation.

16 MS. SMITH: Okay. And did you have any idea that
17 you could make a videoconference call using your Xbox?

18 JUROR LANKFORD: No, ma'am.

19 MS. SMITH: Do you have a Kinect, do you know, with
20 your Xbox? It's a separate box that --

21 JUROR LANKFORD: No, ma'am.

22 MS. SMITH: -- there would be two consoles?

23 JUROR LANKFORD: No, ma'am.

24 MS. SMITH: Okay. Thank you.

25 And, Mr. Ellis, did you have a Kinect?

1 JUROR ELLIS: Yes.

2 MS. SMITH: I apologize, Mr. Johnston, I'm giving
3 you a workout.

4 What do you use your Kinect for?

5 JUROR ELLIS: I actually don't use it right now.
6 It's unplugged, but I do have it.

7 MS. SMITH: Thank you, sir.

8 Not -- not our favorite topic at Microsoft, but
9 does anybody have competing products like a Wii or a
10 PlayStation or a console like that? Ms. Hodges and
11 Ms. Cherry and Ms. Trahan.

12 All right. Ms. Trahan, let's start because you're
13 closest to Mr. Johnston. What else do you have?

14 JUROR TRAHAN: They all sound very familiar. I
15 just paid for them. He plays with them.

16 MS. SMITH: Okay. Okay.

17 JUROR TRAHAN: But they all sound very familiar. I
18 can't tell you what the numbers are, but he's got them all.

19 MS. SMITH: Okay. And when you say he, that's --

20 JUROR TRAHAN: My son.

21 MS. SMITH: -- your son. That -- that brings up
22 another -- another question that I want to ask.

23 You would probably agree, I'm sensing, that -- that
24 persons under the age of 18, they can influence decisions,
25 buying decisions in a household?

1 JUROR TRAHAN: Yes.

2 MS. SMITH: Wouldn't you say?

3 Would -- would you say that your son probably had a
4 lot to say about which console you purchased?

5 JUROR TRAHAN: He had everything to say about it.

6 MS. SMITH: Everything to say?

7 JUROR TRAHAN: Yes.

8 MS. SMITH: Fair enough.

9 JUROR TRAHAN: And he has played since he was a
10 little kid, and he's 21, and we still can't get them off of
11 any of them.

12 MS. SMITH: I -- I --

13 JUROR TRAHAN: He still plays a lot.

14 MS. SMITH: I, obviously, have -- I have an Xbox.
15 So I'm starting mine young as well. I have a six year old
16 that's probably going to grow up to be just like your son.

17 JUROR TRAHAN: Good luck.

18 MS. SMITH: Thank you.

19 JUROR TRAHAN: Although he's a very smart kid, he
20 did very well in college.

21 MS. SMITH: I --

22 JUROR TRAHAN: He's -- he is very intelligent.

23 MS. SMITH: I hope he's a productive member of
24 society. That's what I want to hear.

25 THE COURT: All right. Ladies, let's get on to

1 more questions.

2 MS. SMITH: All right. I apologize, Your Honor.

3 Okay. We had someone else with a competing
4 product, Ms. Hodges.

5 Mr. Johnston, if you wouldn't mind passing the mic.

6 What do you have?

7 JUROR HODGES: We have an Xbox 360 and a Kinect.

8 And upgraded to the PS4.

9 MS. SMITH: Okay. When you had your Xbox 360 and
10 Kinect, did you ever use that for -- for making video calls?

11 JUROR HODGES: No.

12 MS. SMITH: Did you have any idea, whatsoever, that
13 it even had the ability to make a video call?

14 JUROR HODGES: No.

15 MS. SMITH: So did you know that your PlayStation
16 actually cannot make video calls?

17 JUROR HODGES: I did not.

18 MS. SMITH: All right. Thank you, ma'am.

19 I think what I want to do next is I want to divide
20 you guys into two groups, and I'll give you some background
21 on what I'm doing. In this case you're going to hear that
22 it's not enough for the Plaintiff to say, well, you know,
23 the -- you know, the Xbox is accused, it functions like a
24 Biscotti. You know, you could make a video call with it so,
25 therefore, Microsoft infringes.

1 The -- the Plaintiff is going to have to prove each
2 and every element of the claims at issue in the case, and so
3 that requires people to kind of look under the hood, if you
4 will, at the technology.

5 So I'm going to divide you up in two groups really
6 quickly. The first group is people that, you know, you --
7 you use technology, you like it, but you really don't like
8 to, quote, look under the hood and know how it works.

9 And the second group is the people that, you know,
10 they're the people that you go to when something's broken.
11 You know, some electronic device is broken, you go to them
12 for help.

13 We'll start with you, Ms. Jerguson, which group
14 would you put yourself in?

15 JUROR JERGUSON: Number one.

16 MS. SMITH: Number one.

17 So you use technology, but you don't want to know
18 what's under the hood?

19 JUROR JERGUSON: I use it, and I don't need to know
20 how it works.

21 MS. SMITH: Okay. Thank you, ma'am.

22 Ms. Hodges?

23 JUROR HODGES: Number two.

24 MS. SMITH: Number two.

25 Ms. Chaney?

1 JUROR CHANEY: Number one.

2 MS. SMITH: Group number one.

3 Mr. Smith?

4 JUROR JERRY SMITH: One.

5 MS. SMITH: Ms. Cherry?

6 JUROR CHERRY: Group one.

7 MS. SMITH: Ms. Edney?

8 Two. You're a two, okay.

9 And Ms. Trahan?

10 Don't -- don't care how it works. All right.

11 THE COURT: We're going to have to get out -- we're
12 going to have to get verbal answers for the record, counsel.
13 You can have them hold up fingers, but you're going to have
14 to call them out so we have it in the record.

15 MS. SMITH: Of course, Your Honor, I apologize.

16 So we had -- let's go to Mr. Garner, are you group
17 one or group two, you want to look under the hood of
18 electronic devices?

19 JUROR GARNER: One.

20 MS. SMITH: One.

21 No. 9, Ms. Morgan?

22 JUROR MORGAN: Two.

23 MS. SMITH: Two.

24 Ms. Gunsolus is a two.

25 A number one, Ms. Lankford?

1 JUROR LANKFORD: One.

2 MS. SMITH: All right. No. 11 is a number one.

3 Ms. Lambright?

4 JUROR LAMBRIGHT: One.

5 MS. SMITH: One.

6 Mr. White?

7 JUROR WHITE: One.

8 MS. SMITH: And Ms. Kelley?

9 JUROR KELLEY: A two.

10 MS. SMITH: Okay. What I want to know from this
11 group over here is do we have any numbers one in this -- if
12 you can raise your hand so I can see who's number one.

13 Actually, that's actually everybody except for
14 Ms. Miller, it looks like.

15 Thank you.

16 You guys had an opportunity to watch the patent
17 video this morning. And was there anybody surprised when
18 the gentleman, judge, in the patent video told you all that
19 you would actually have the power to invalidate a patent?
20 Did that surprise anybody? By a showing of hands.

21 Okay. We've got some -- some folks shaking their
22 head.

23 Mr. Ross, did that surprise you?

24 JUROR ROSS: Yes.

25 MS. SMITH: Okay. All right. Well, on that note,

1 do you think it's possible for the government to make a
2 mistake?

3 I usually get -- Ms. Hodges, I usually get a few
4 laughs with that question. Work with me here.

5 JUROR ROSS: Yeah, I think everybody can make a
6 mistake.

7 MS. SMITH: Thank you, sir. Thank you, sir.

8 JUROR ROSS: Do I think I can make a -- I don't
9 know nothing about nothing technology. I mean, I'm -- so I
10 don't -- I don't think I could have the power to do that.
11 But yeah, everybody can make a mistake.

12 MS. SMITH: Well, and you, sir, Mr. Ross, you have
13 walked right into my next question.

14 JUROR ROSS: That's awesome.

15 MS. SMITH: Mr. Cederroth, if you could -- if you
16 could put that up on the screen.

17 Now -- and, Mr. Ross, you're welcome to take a
18 seat.

19 Now, my question is a little bit -- a little bit
20 tricky, so I put it up on the screen for your benefit.

21 If the evidence supports it -- and remember, you
22 haven't heard any evidence in this case. How comfortable
23 are you in a role where you're going to be saying that the
24 Patent Office got it wrong and they should not have issued a
25 patent? You heard from the video that jurors have every

1 ability to say the Patent Office got it wrong. But what I'm
2 going to do, I'm going to go through these first two rows,
3 again, starting with Ms. Trahan, I just want you to give
4 your number on a scale of zero to 10, zero being, you know,
5 regardless of what the evidence shows, I just couldn't take
6 someone's patent away, to 10 being I can -- I can listen to
7 the evidence and if the evidence supports it, I can
8 invalidate a patent?

9 Ms. Trahan, what number are you?

10 JUROR TRAHAN: I think I would be number 10.

11 MS. SMITH: Thank you.

12 Ms. Edney?

13 JUROR EDNEY: Five.

14 MS. SMITH: All right. Why -- why do you say five,
15 Ms. Edney?

16 JUROR EDNEY: I'm in between, like, I guess it
17 depends on the situation. I really want to know, I guess,
18 if it's -- I guess if it's bad, maybe a 10, but if it's not
19 really that important, then five.

20 MS. SMITH: Now -- now, I represent Microsoft in
21 the case, so I will tell you that our position is going to
22 be that this Biscotti patent shouldn't have ever been issued
23 by the PTO, that they got it wrong. Should I be a little
24 worried about the fact that -- that you're saying you might
25 not be able to invalidate a patent under any evidence?

1 JUROR EDNEY: No.

2 MS. SMITH: Thank you.

3 All right. Ms. Cherry, what number are you?

4 JUROR CHERRY: I believe if the evidence showed
5 that the patent was issued incorrectly, that I would be able
6 to, so I would say nine, 10.

7 MS. SMITH: Thank you, ma'am.

8 Mr. Smith?

9 JUROR JERRY SMITH: I'm going to say I'm between
10 number five and number six, they would really have to show
11 some evidence to really make me believe.

12 MS. SMITH: Okay. Thank you, sir.

13 JUROR JERRY SMITH: Uh-huh.

14 MS. SMITH: Ms. Chaney?

15 JUROR CHANEY: I guess about an eight.

16 MS. SMITH: Thank you, ma'am.

17 Ms. Hodges?

18 JUROR HODGES: 10.

19 MS. SMITH: Thank you, ma'am.

20 Ms. Jerguson?

21 JUROR JERGUSON: 10.

22 MS. SMITH: And Mr. Johnson, we can go straight
23 back to Ms. Kelley, No. 14.

24 JUROR KELLEY: A 10.

25 MS. SMITH: 10.

1 Mr. White?

2 JUROR WHITE: I'm about an eight.

3 MS. SMITH: Eight, thank you.

4 Ms. Lambright?

5 JUROR LAMBRIGHT: If the evidence is there, I'll
6 say a 10.

7 MS. SMITH: Thank you, ma'am.

8 Ms. Lankford?

9 JUROR LANKFORD: A 10.

10 MS. SMITH: Ms. Gunsolus?

11 JUROR GUNSOLUS (CLONINGER): A 10.

12 MS. SMITH: Ms. Morgan?

13 JUROR MORGAN: 10.

14 MS. SMITH: And Mr. Garner?

15 JUROR GARNER: 10.

16 MS. SMITH: Thank you, sir.

17 On these last three rows over here, do I have
18 anybody that would be around one or a two or a three on that
19 scale?

20 Thank you, all.

21 All right. And Mr. Jones actually hit a little bit
22 on my next question. It's what I call my David and Goliath
23 question. So we're not going to hide it. Microsoft is --
24 we're a big company, and we're a successful company. And
25 Biscotti is -- it's a smaller company.

1 So who I'm trying to identify with this question is
2 a person that is kind of a champion of the underdog. Is
3 there anyone on the first row, on Ms. Trahan's row, that
4 considers themselves kind of a championship of the underdog?
5 If we're going to start a race and I've got the big company
6 and there's a small company over here, is the small company,
7 are you going to be pulling for the small company without
8 hearing any of the evidence?

9 Anyone on the second row that believes that?

10 Anyone on these back rows that would consider
11 themselves kind of the champion of the underdog?

12 Thank you.

13 Now, I have another slide that kind of plays on
14 this theme. And, again -- and Mr. Jones got into this a
15 little bit, but I want to hear it from these first two rows
16 again on this question.

17 You haven't heard any evidence yet, but I want to
18 know how comfortable you would be awarding a Plaintiff zero
19 dollars if they don't meet their burden to prove the case?
20 Again, smaller company, big company, could you award the
21 Plaintiff zero dollars if they didn't meet their burden?

22 Mr. Garner, yes, sir?

23 JUROR GARNER: Are we supposed to be able to see
24 this slide because we can't see anything?

25 MS. SMITH: Yes, you are.

1 THE COURT: Is it not on the screen, sir?

2 JUROR GUNSOLUS (CLONINGER): No, the screens aren't
3 on.

4 JUROR TRAHAN: I don't have a screen.

5 JUROR GARNER: We couldn't see theirs either.

6 THE COURT: Well, we obviously have a technical
7 issue, but I'm not going to stop the process to try and fix
8 the technical issue.

9 JUROR GARNER: They turned theirs around.

10 THE COURT: Okay. If you need to, look around each
11 other so you can see the monitors on the counsel table.

12 MS. SMITH: Thank you. Thank you, Mr. Jones, for
13 doing that.

14 THE COURT: Go ahead, Ms. Smith.

15 MS. SMITH: Thank you, Your Honor.

16 All right. So this will be a lot more helpful now
17 that you see -- you've got my scale up there. So on the 0
18 end, we've got regardless of the evidence, you could never
19 look at the smaller Plaintiff and award them zero dollars.
20 And then on the 10 end, if the evidence supports it, I could
21 absolutely award zero dollars to a Plaintiff.

22 I'm going to have you go through real quick, the
23 first two rows, and just give me your number on a scale of 0
24 to 10 starting with Ms. Trahan.

25 JUROR TRAHAN: 10.

1 MS. SMITH: Thank you, ma'am.

2 Ms. Edney?

3 JUROR EDNEY: 10.

4 MS. SMITH: Ms. Cherry?

5 JUROR CHERRY: 10.

6 MS. SMITH: Thank you, ma'am.

7 Mr. Smith?

8 JUROR JERRY SMITH: 7.

9 MS. SMITH: Well, I want to hear a little more
10 about this --

11 THE COURT: You have five minutes remaining,
12 Ms. Smith.

13 MS. SMITH: Thank you.

14 Tell me a little bit why you're a seven.

15 JUROR JERRY SMITH: Well, my daddy got a mechanic
16 shop, and we don't have a lot of people try to sue us for
17 work saying that we didn't do it and all that stuff, and if
18 they want to prove that we did it, it was their word against
19 ours and knowing they won the case, so...

20 MS. SMITH: Okay.

21 JUROR JERRY SMITH: It's kind of hard, you know, by
22 me being through lawsuit with my daddy company and stuff,
23 you know, you have show me a lot of proof about stuff for me
24 to do stuff.

25 MS. SMITH: But at the same time, I'm on the -- I'm

1 defending against a lawsuit that they brought.

2 JUROR JERRY SMITH: I understand.

3 MS. SMITH: Do you -- in some ways do you have a
4 pretty -- a perspective at some point in life kind of like
5 Microsoft --

6 JUROR JERRY SMITH: Well, if you're not familiar
7 with the stuff that -- you know, I would rather have the
8 evidence because a lot of people say they know something
9 about mechanic and don't know nothing about mechanic, but
10 they can win the lawsuit.

11 MS. SMITH: Fair enough. Thank you, Your Honor.
12 Finish out this row.

13 JUROR CHANEY: 10.

14 MS. SMITH: Thank you, Ms. Chaney.

15 Ms. Hodges?

16 JUROR HODGES: 10.

17 MS. SMITH: Ms. Jergusson?

18 JUROR JERGUSON: 10.

19 MS. SMITH: Thank you.

20 Ms. Kelley?

21 JUROR KELLEY: A 10.

22 MS. SMITH: Okay. Mr. White?

23 JUROR WHITE: 10.

24 MS. SMITH: Ms. Lambright?

25 JUROR LAMBRIGHT: 10.

1 MS. SMITH: Ms. Lankford?

2 JUROR LANKFORD: 10.

3 MS. SMITH: Ms. Gunsolus?

4 JUROR GUNSOLUS (CLONINGER): 10.

5 MS. SMITH: Ms. Morgan?

6 JUROR MORGAN? 10.

7 MS. SMITH: And Mr. Garner?

8 JUROR GARNER: 10.

9 MS. SMITH: Okay. Now, Ms. Chaney, I had a
10 question for you. On your jury questionnaire, you checked
11 the box that said you might not be able to be fair and
12 impartial. You checked yes on that. Can you tell me a
13 little bit about that?

14 JUROR CHANEY: Might have been an accident.

15 MS. SMITH: And I thought it might have been an
16 accident, but I had to ask.

17 JUROR CHANEY: Yeah, it might have been an
18 accident.

19 MS. SMITH: Okay. Ms. Alexander, you said you had
20 a friend that was a lawyer or in legal community, close
21 friends?

22 JUROR ALEXANDER: Yes, but it's in a town three
23 hours away from here.

24 MS. SMITH: Okay. Thank you. Well, you know,
25 where -- where -- who is it?

1 JUROR ALEXANDER: In Jasper, Texas.

2 MS. SMITH: Okay. Who is that friend?

3 JUROR ALEXANDER: Gary Gatlin. He's also a Judge.
4 He was a personal attorney.

5 MS. SMITH: Okay. All right. That answers what he
6 does -- what type of law he does.

7 Mr. Ellis, you had an interesting comment on
8 your -- on your jury questionnaire. You said that you --
9 and I apologize if I'm not reading your writing correctly,
10 but that you might think that the system is -- is a little
11 bit flawed?

12 JUROR ELLIS: Oh, I think our justice system shows
13 us all the time that it is very flawed.

14 MS. SMITH: Well, tell me a little bit more about
15 your thoughts on that. Is it because of some personal
16 experience you've had or something you've read?

17 JUROR ELLIS: It's through watching the news. I
18 see one person get so many years for something, somebody
19 else gets probation for, depending who they are, money,
20 something of that nature.

21 MS. SMITH: Thank you, sir.

22 Mr. Garner, you've been a juror -- a juror in a
23 case before that went to verdict; is that correct?

24 JUROR GARNER: Yes.

25 MS. SMITH: Okay. Was that at this courthouse, you

1 said?

2 JUROR GARNER: Yes.

3 MS. SMITH: Okay. Was I involved in that case?

4 JUROR GARNER: No.

5 MS. SMITH: Because I had a case with similar
6 facts, so I had to ask. And I was going to apologize if I
7 didn't remember you. And you were not the foreperson on
8 that case?

9 JUROR GARNER: No.

10 MS. SMITH: And what was the outcome?

11 JUROR GARNER: I think the guy that was being sued
12 ended up winning the case.

13 MS. SMITH: Okay. Thank you, sir.

14 Now, you heard a lot from Mr. Jones, but I will
15 tell you he's going to be joined by a number of other
16 lawyers in this courtroom representing Biscotti, Adam Alper,
17 Eric Cheng, Elliot Hales, Mike De Vries, Sharre Lotfollahi,
18 Justin Singh, Amanda Hollis, Ryan Hubbard. Mr. Jones has
19 nine or 10 partners, as well. I don't know if any of them
20 will be in the courtroom. But does anybody recognize the
21 names of any of those lawyers?

22 All right. I'm going to end on a question
23 strikingly similar to Mr. Jones's question, and I'll tell
24 you, I had jury duty when I was probably about eight months
25 and three weeks pregnant with my second child in Marion

1 County. And it was a criminal case. And it was about
2 some -- somebody that did intentional harm to a child. And
3 sitting there eight and a half plus months pregnant, I could
4 not have been a worst juror for that case, quite frankly.
5 And as a lawyer, you know, I want to say I'll be fair, but I
6 just was not a good choice. But those lawyers -- neither of
7 the lawyers asked me the question that I'm about to ask you
8 because we can't think of all the questions.

9 Is there anything somebody wants to tell me or
10 anybody want to tell us anything -- any reason why you might
11 not be the best fit for this case? And I know you haven't
12 heard the evidence, but you get an idea of where we're
13 headed on this case. Is there anything you think as a
14 lawyer defending Microsoft in this case, you think I might
15 need to know before we select you for our jury?

16 Ms. Trahan?

17 THE COURT: Ms. Smith, your time has expired. I'll
18 allow Ms. Trahan to answer this question.

19 JUROR TRAHAN: And I'll be quick. You -- during
20 the years of my son owning consoles, he got real frustrated
21 with several of them. I can't tell you who they were, but
22 -- and his comment was always, well, there's a new one out
23 so this one's going to break right in time for me to buy the
24 new one, and, you know, so he had that attitude about it
25 which sort of stuck with me.

1 MS. SMITH: I appreciate your honesty. Thank you,
2 Ms. Trahan.

3 Was there anybody else?

4 Thank you, Your Honor.

5 THE COURT: All right. Counsel, approach the
6 bench, please.

7 (Bench conference.)

8 THE COURT: Mr. Jones, does the Plaintiff have any
9 challenges for cause?

10 MR. JONES: No, Your Honor.

11 THE COURT: Ms. Smith?

12 MS. SMITH: No, Your Honor.

13 THE COURT: All right. I need to tell you that
14 just before I came into the courtroom, the clerk advised me
15 that Mr. Ross, Panel Member No. 16, told her that he had a
16 medical condition that caused him not to be able to sit for
17 long periods of time.

18 I intend to bring him up to the bench when I talk
19 to these that have scheduling problems and at least ask him
20 if he's physically able to serve if selected.

21 MS. SMITH: Yes, Your Honor.

22 THE COURT: All right.

23 MR. JONES: Yes, Your Honor.

24 THE COURT: All right. If you'll take your seats,
25 I'm going to send the rest of the panel out for recess, and

1 then we'll bring up those who have indicated scheduling
2 problems -- would be Mr. Ellis; Mr. Ross for the reasons
3 I've mentioned; Ms. Spurr, No. 21; and Mr. Rodgers, No. 25.

4 And Mr. Rodgers informed the clerk that he has a
5 mother in intensive care in Longview hospital. So I want to
6 make sure that -- that's probably why he raised his hand
7 that he may have a scheduling problem.

8 All right. Take your sheets seats.

9 MS. SMITH: Thank you.

10 (Bench conference concluded.)

11 THE COURT: All right. Ladies and gentlemen, I'm
12 going to excuse the panel for recess, except I'm going to
13 keep a couple of you -- few of you behind, and I'm going to
14 ask these juror panel members that I call your numbers, if
15 you would stay where you are while the rest of the panel
16 recesses.

17 Those of you that are about to leave for recess,
18 I'll ask you to exit through the double doors in the back of
19 the courtroom. I'm going to ask you to stay inside the
20 courthouse. Don't leave the building.

21 Just for your convenience and knowledge, if you
22 take a left going out of the double doors, around the
23 corner, you'll find water fountains and restrooms. And
24 you're welcome to take advantage of those.

25 Don't discuss anything that's happened in the

1 courtroom this morning. Talk about all this rainy weather
2 we're having, talk about whatever you'd like, but don't
3 discuss anything that's happened in the courtroom this
4 morning. You have not heard any evidence in this case as of
5 right now.

6 So I'm going to ask the following members of the
7 panel to remain behind. Those members are No. 15,
8 Mr. Ellis; No. 16, Mr. Ross; No. 21, Ms. Spurr; and No. 25,
9 Mr. Rodgers.

10 Everyone else on the panel, with those
11 instructions, is excused for recess.

12 COURT SECURITY OFFICER: All rise.

13 (Jury panel out.)

14 THE COURT: All right. Be seated, please.

15 Counsel, approach the bench, please.

16 And, Mr. Ellis, would you come up and join us,
17 please, sir?

18 (Bench conference.)

19 THE COURT: Good morning, Mr. Ellis.

20 These are our microphones, and you and I are going
21 to talk quietly into those.

22 When we started this morning, I asked if anybody
23 had a potential scheduling issue that would keep them from
24 being able to serve all week if they were selected, and you
25 raised your hand. Can you tell me about that?

1 JUROR ELLIS: I have religious duties to perform on
2 Friday preparing for our festival on Saturday. I will be
3 out in Troup from Thursday night until Sunday night.

4 THE COURT: Okay. All right. Can you give me any
5 more detail about that?

6 JUROR ELLIS: It's our midsummer celebration for my
7 religion.

8 THE COURT: Can -- what religion is that?

9 JUROR ELLIS: I'm a heathen, a pre-Christian
10 polytheistic beliefs of northern Europe.

11 THE COURT: Okay. And that -- that -- that
12 religious exercise will start when, did you say?

13 JUROR ELLIS: Our -- it actually starts Saturday
14 morning, but I am part of the crew that comes out and
15 prepares everybody the day before.

16 THE COURT: Okay.

17 JUROR ELLIS: And my work schedule usually doesn't
18 include Fridays.

19 THE COURT: Okay. And that preparation the day
20 before, is that an all day operation?

21 JUROR ELLIS: Yes. Yes, sir. Yes, Your Honor.

22 THE COURT: All right. Mr. Jones, do you have any
23 questions --

24 MR. JONES: No, sir.

25 THE COURT: -- of Mr. Ellis?

1 Ms. Smith?

2 MS. SMITH: No, Your Honor.

3 THE COURT: Okay. Mr. Ellis, I'm going to ask you
4 to join the rest of the group outside. Just don't discuss
5 anything that we've talked about in here.

6 JUROR ELLIS: Yes, Your Honor.

7 THE COURT: Thank you.

8 (Juror Ellis leaves courtroom.)

9 THE COURT: I'm going to excuse Mr. Ellis.

10 (Open court.)

11 THE COURT: Mr. Ross, would you come up, please,
12 sir?

13 (Bench continues.)

14 JUROR ROSS: Yes, sir?

15 THE COURT: Good morning, Mr. Ross.

16 JUROR ROSS: Good morning.

17 THE COURT: These are our microphones. You and I
18 are just going to talk quietly into those.

19 JUROR ROSS: Okay.

20 THE COURT: The clerk indicated to me that you told
21 her this morning after you appeared that you had medical
22 issues about sitting for long periods of time.

23 JUROR ROSS: Yes, sir, I've got --

24 THE COURT: That's why you're up here.

25 JUROR ROSS: Yeah, I've got diabetic neuropathy.

1 And -- and it's pretty effective. Just even sitting this
2 long was almost too long.

3 THE COURT: Okay.

4 JUROR ROSS: I get no feeling in my legs and stuff
5 like that.

6 THE COURT: Well, just so you'll know, and you can
7 tell me how this might affect you. In a typical trial, we
8 will take breaks and recesses during the day, but there are
9 times where we could go as much as two hours without having
10 a break.

11 Now, if you were on the jury and if we were to go
12 as much as two hours without a chance to stand up and take a
13 break, how would your situation play with that?

14 JUROR ROSS: Yeah, it would make me very
15 uncomfortable for me. I -- after -- even after about an
16 hour I start squirming trying to get some blood flow to my
17 legs and stuff like that.

18 THE COURT: Okay. And --

19 JUROR ROSS: If I were to sit that long, my foot
20 would go to sleep, and when I fall -- I mean, when I stand,
21 you know, I'd have to stand there and move around a little
22 bit and get things going right.

23 THE COURT: Okay.

24 JUROR ROSS: I guess that makes sense.

25 THE COURT: Well, you know your condition better

1 than I do. But in light of what I've told you about
2 potentially going as much as two hours between breaks, do
3 you think you could serve under those circumstances, or do
4 you think -- I mean, would it be --

5 JUROR ROSS: No, sir, I don't think so.

6 THE COURT: You don't think so?

7 JUROR ROSS: No, I don't believe. It would make it
8 very -- make it very, very difficult.

9 THE COURT: Okay. Mr. Jones, any questions?

10 MR. JONES: No, Your Honor.

11 THE COURT: Ms. Smith?

12 MS. SMITH: No, Your Honor.

13 THE COURT: All right. Mr. Ross, I'm going to ask
14 you to join the rest of the panel outside --

15 JUROR ROSS: Okay.

16 THE COURT: -- on recess. Just don't discuss
17 anything we've talked about in here.

18 JUROR ROSS: Okay. Thank you.

19 THE COURT: Thank you, sir.

20 (Juror Ross leaves courtroom.)

21 THE COURT: I'm going to excuse Mr. Ross.

22 (Open court.)

23 THE COURT: Ms. Spurr, would you join us, please,
24 ma'am?

25 (Bench continued.)

1 THE COURT: Good morning.

2 JUROR SPURR: Good morning.

3 THE COURT: These are our microphones. If you'll
4 step up and you and I can just talk quietly in those.

5 When we began this morning I asked about people
6 that might not be able to serve all week if they were
7 selected, and you raised your hands.

8 JUROR SPURR: Yes.

9 THE COURT: Can you tell me -- you raised your
10 hand. Can you tell me about that.

11 JUROR SPURR: My daughter is having surgery
12 Wednesday morning in McKinney.

13 THE COURT: Okay.

14 JUROR SPURR: She's got a little six month old that
15 she needs some help with.

16 THE COURT: Okay. Is it just in and out day
17 surgery, or is it major surgery?

18 JUROR SPURR: It's a day surgery, but it's taking a
19 rod out of her arm.

20 THE COURT: Okay.

21 JUROR SPURR: And she won't be able to use her arm.

22 THE COURT: Okay. If you were on the jury and not
23 able to be there, is there anybody else that could take care
24 of her child for her?

25 JUROR SPURR: My sister was going to help, and she

1 broke her foot last week.

2 THE COURT: Okay. So anyone else that you're aware
3 of that could fill the gap, if necessary?

4 JUROR SPURR: No.

5 THE COURT: Okay.

6 JUROR SPURR: Not that I'm aware of.

7 THE COURT: All right. Well, Ms. Spurr, I'm not
8 going to keep you from being with your daughter when she has
9 surgery. But I am going to ask you just to join the rest of
10 the group outside on recess and not to discuss anything that
11 we've talked about in here.

12 JUROR SPURR: Okay.

13 THE COURT: Okay. Thank you.

14 JUROR SPURR: Thank you.

15 (Juror Spurr leaves courtroom.)

16 THE COURT: I'm going to excuse Ms. Spurr.

17 (Open court.)

18 THE COURT: Mr. Rodgers, would you join us, please.

19 (Bench continues.)

20 THE COURT: I don't think we're going to strike
21 through 25 anyway, are we?

22 MS. SMITH: No, Your Honor.

23 THE COURT: Okay.

24 Mr. Rodgers, I understand from the clerk that
25 your -- is it mother --

1 JUROR RODGERS: Yes.

2 THE COURT: -- is in ICU?

3 JUROR RODGERS: Uh-huh.

4 THE COURT: All right.

5 JUROR RODGERS: Put her in there three days ago.

6 THE COURT: All right. Which hospital is she in?

7 JUROR RODGERS: Good Shepherd, fifth floor.

8 THE COURT: Here in Marshall or Longview?

9 JUROR RODGERS: Longview.

10 THE COURT: Okay. I'm not going to require you to
11 serve on this jury.

12 JUROR RODGERS: I don't think it would be a good
13 idea.

14 THE COURT: Well, I'm going to ask you -- I'm going
15 to ask you just to join the rest of the group outside and
16 not discuss anything that's happened in here.

17 JUROR RODGERS: Yes, sir.

18 THE COURT: And you'll be back in, and you'll be
19 formally excused in just a minute. But if you'll just join
20 the rest of the group.

21 JUROR RODGERS: All right. Thank you, sir.

22 THE COURT: Thank you, sir.

23 (Juror Rodgers leaves courtroom.)

24 THE COURT: I'm going to strike Mr. Rodgers, even
25 though we won't reach him.

1 Okay. With those that have been struck, eight to
2 be seated, four strikes per side, that gets us through,
3 what, 18?

4 MR. JONES: I believe so, Your Honor.

5 THE COURT: Okay. How long do you all need to
6 strike your list?

7 MR. JONES: Fifteen minutes.

8 MS. SMITH: That'd be wonderful.

9 THE COURT: All right. Quarter after 11:00. If
10 you'll have your list to Ms. Lockhart, all right?

11 MS. SMITH: Thank you.

12 MR. JONES: Thank you.

13 (Bench conference concluded.)

14 THE COURT: All right. Court will stand in recess
15 while counsel exercise their peremptory challenges. The
16 Court is in recess.

17 COURT SECURITY OFFICER: All rise.

18 (Recess.)

19 COURT SECURITY OFFICER: All rise.

20 THE COURT: Be seated, please.

21 All right. Ladies and gentlemen, if you will
22 listen carefully as your name is called, if you'll come
23 forward and have a seat in the jury box. We're going to
24 seat eight jurors in this case, and I'm going to ask that
25 the first four be on the first row of the jury box, and the

1 second four be on the second row of the jury box.

2 To ensure that the jury, once they're in the box,
3 are centrally located, I'm going to ask the first juror
4 called to come to Row 1 of the jury box and stand in front
5 of the third chair from the end. Leave two vacant chairs
6 past where Juror No. 1 stands, and then 2, 3, and 4 will
7 follow in behind. And then the second four will go to the
8 second row and stand behind their -- the chairs that
9 correspond with the jurors standing in front of them. And
10 that way we'll have four and four centrally located in the
11 middle of the jury box.

12 So with that, Ms. Lockhart, if you will call the
13 names of the eight members of the panel who have been
14 selected as the jury in this case.

15 COURTROOM DEPUTY: Lucinda Trahan, Taira Edney,
16 Tammy Chaney, Jill Jerguson -- Jerguson, Tommy Garner,
17 Brenda Morgan, Deanna Lambright, and Reagan White.

18 THE COURT: Please be seated.

19 All of you that were not selected to serve on the
20 jury, I'm about to excuse you, but I want to excuse you with
21 the sincere and heartfelt thanks of the Court. I know that
22 the parties and counsel, as well as the Court staff, join me
23 in that.

24 I want you to all understand that though you were
25 not selected to serve on this jury, you have performed very

1 real and important public service by being here. This Court
2 and our entire third branch of our national government could
3 not function as we're required to under the Constitution
4 unless ordinary American citizens responded positively as
5 you have and answered the call of jury duty, came to court,
6 presented yourself to serve, and even though you weren't
7 selected, you have done very important public service by
8 being here.

9 I know that every one of you had other places to be
10 this Monday morning, things to do that were important in
11 your lives, and other responsibilities that you set aside to
12 answer the call of jury service and come and present yours
13 as a part of the jury panel this morning.

14 So you should -- you should feel very persuaded
15 that what you've done is important. The Court is persuaded
16 that it's important, and the Court recognizes it and thanks
17 you.

18 The only thing I would ask is at such date in the
19 future when you are called again, if you will do as you have
20 this time and present yourself with the same positive
21 attitude that each of you have shown this morning. We can't
22 ask for any more than that. We appreciate what you've done.

23 If you need anything for an employer to verify
24 where you've been, if you need any other documentation or
25 any other questions about your service, if you'll see Ms.

1 Martin in the clerk's office when you leave, I know she's
2 going to want to recover those very valuable buttons and
3 pins from you. If you'll make sure she gets those.

4 And, again, ladies and gentlemen, thank you for
5 being here. Thank you for being good citizens and
6 responding to the call of jury duty. You are excused and
7 released.

8 COURT SECURITY OFFICER: All rise.

9 (Jury panel out.)

10 THE COURT: All right. If everyone except the
11 members of the jury would have a seat, please.

12 I'm going to ask our courtroom deputy, Ms.
13 Lockhart, to administer the oath to the members of the jury
14 at this time.

15 (Jurors sworn.)

16 THE COURT: Please have a seat.

17 Ladies and gentlemen, I'm about to excuse you for
18 lunch. I'm going to ask that you be back assembled in the
19 jury room a few minutes before 1:00 o'clock, and we will try
20 to start as promptly and as close to 1:00 o'clock as
21 possible.

22 But before you recess for lunch, I have a few
23 additional instructions I need to give you.

24 First of all, I think it would be a good idea, as
25 you leave for lunch, if you will stop by the clerk's office,

1 make sure they have a good cell phone number or a way to
2 reach you outside of your normal contact information at home
3 if for any reason during the day or any other time outside
4 of normal hours we may need to reach you, if you'll make
5 sure they have that contact information.

6 Also, speaking of cell phones, when you come back
7 from lunch today, I'm going to ask that you leave your cell
8 phones either in your automobiles or leave them in the jury
9 room, but I'm going to ask that you not bring cell phones or
10 any electronic devices into the courtroom.

11 No matter how sure you are that they are silenced,
12 invariably one of them will not be and it will ring and
13 disrupt the process in the middle of the trial. And part of
14 my job is to ensure that we have as few disruptions as
15 possible. I don't want anything to interrupt your
16 concentration as the evidence is presented to you during the
17 trial.

18 Counsel and the parties are entitled to have
19 electronics in the courtroom because it's part of their
20 working tools, if you will, in conducting the trial. But
21 they're under the same instruction to make sure that they're
22 silent, to make sure that they don't disrupt the process.
23 And if that should happen, I'll deal with it, but I'm going
24 to ask you, if you will, to leave your cell phones in the
25 jury room or in your cars.

1 If you are expecting an important email or need to
2 make an important phone call, there will be breaks and
3 recesses every day throughout the trial that you'll have an
4 opportunity to do that, but if you will, just leave them in
5 your vehicles or in -- not bring them back into the jury
6 room.

7 Also, I have a couple other instructions for you.
8 First of all, and all of these instructions are important,
9 but none of them are more important than this one. Do not
10 discuss the case with anyone. I'll say that again. Do not
11 discuss the this case with anyone.

12 It is absolutely essential, ladies and gentlemen,
13 that when this trial is complete, and you are instructed by
14 me to retire to the jury room and to deliberate on your
15 verdict to consider and answer the questions that the
16 Court's going to submit to you in that verdict form, it is
17 absolutely essential that the sole source of any and all
18 information that you will draw upon to answer those
19 questions must have come from the evidence presented in open
20 court from the witness stand subject to cross-examination.
21 That is why it is essential that you not communicate about
22 this case with anyone, because if you do, there is an
23 exceedingly high risk that you will have information that
24 did not come to you through the process of trial in open
25 court under oath and subject to cross-examination.

1 And that instruction not to discuss the case with
2 anyone applies to the eight of you. Until all the evidence
3 has been presented, until you retire to the jury room to
4 deliberate on your verdict, you are not to discuss the case
5 among the eight of yourselves at all during recesses, lunch
6 breaks, at any time until all the evidence is in, until I
7 instruct you to retire and deliberate on a verdict.

8 Now, when that time comes, it will be your duty
9 to discuss the evidence and the case among yourselves,
10 but until all the evidence has been presented, you're not
11 to discuss the case among yourselves in any fashion. And
12 until I discharge you from your duty as jurors, you are
13 not to discuss the case with anyone. And when I say not
14 discuss the case, I mean that in the broadest possible
15 sense, I mean don't communicate about the case with
16 anyone.

17 That -- that also includes not only oral
18 communications, that includes emails, that includes texts,
19 that includes posts on Facebook or tweets on Twitter. If
20 you are a social media person, you are going to need to be
21 unsocial throughout the rest of this trial. Do not
22 communicate with the case -- about the case with anyone.

23 And I can tell you, ladies and gentlemen, when the
24 day is over today and I release you to go home at the end of
25 the day, unless you live by yourselves, whoever meets you

1 when you get home, the first question they're going to ask
2 when you walk through the door is tell me what happened in
3 federal court in Marshall today. Well, just don't even try
4 to answer that question. Because if you do, you will
5 invariably violate the instruction that I'm giving you.
6 Just say, that very stern federal judge told me not to talk
7 about the case with anyone. When the trial is over, when
8 he's released me, then I can talk with you about it, but not
9 until then. Don't even try to answer that question.

10 Another thing, ladies and gentlemen, again, getting
11 back to the same point that the sole universe of the
12 evidence and the information you have to answer the
13 questions in the verdict form must come from the evidence
14 presented in open court under oath from the witness stand
15 subject to cross-examination.

16 Getting back to that same principle, you're not to
17 do any outside research, whatsoever. You are not to go on
18 the Internet and search regarding any of the parties in this
19 case, any of the terms or facts or issues in the case.
20 You're not to look up any of the lawyers in the case.
21 You're not to do any research of any kind. And that means
22 online research, the old fashion kind in the local library
23 research, any kind of research.

24 And for those of you that have any of the products
25 that will be mentioned during the trial, you're not to

1 examine them. You're not to pick up an Xbox One and see how
2 it works or investigate it in any way. If there's one in
3 your house, leave it alone and ignore it. If there's one
4 somewhere you're going to be, don't look at it, don't
5 examine it, don't have anything to do with it.

6 Again, it is absolutely essential that all the
7 information you base the answers to the important questions
8 that you will answer at the end of this trial come from this
9 courtroom, come under oath, and come before you subject to
10 cross-examination.

11 And if that principle is violated in any way, then
12 we risk having lost all the time, and all the effort, and
13 all the expense that's gone into this trial in going back to
14 the beginning and starting over again. And that is a very,
15 very high cost.

16 So I want you to understand, throughout this trial,
17 I'll repeat some of these instructions to you. I guarantee
18 you, you will be sick and tired of hearing me tell you not
19 to discuss the case with anyone by the time the trial is
20 over because I'm going to say it again almost every time you
21 get up out of those seats, you're going to hear me say that.
22 And that is because though all of my instructions are
23 important, that one is at the top of the list. It is that
24 important, it is that critical. And the risk to all of us
25 if that's violated is so high that you're going to hear me

1 repeat that over and over and over again.

2 Also, ladies and gentlemen, I don't know if it will
3 happen, I don't think it will happen. I will tell you this
4 is an important case, and there's a lot at stake, and it's
5 of vital interest to both of these parties, but now that you
6 are the -- the impaneled jury in this case, it is within the
7 realm of possibility that someone, some third-party, some
8 outside source might approach you and try to influence you,
9 try to persuade you in the worst possible scenario, might
10 try to bribe you. I don't think that is going to happen,
11 but you need to know it is within the realm of possibility.
12 If at any time before I discharge you, if anyone from any
13 source contacts you in any way that you have the least doubt
14 or discomfort about that you think is odd, strange, or out
15 of the ordinary in any way, then you are to advise the clerk
16 immediately, she will bring it to my attention, and the
17 Court will deal with it.

18 I do not think it's likely, but you are jurors in a
19 case in federal court, and there's a lot at stake, and you
20 need to be aware that it is within the realm of possibility.
21 Again, not likely, but you need to be at least aware it is
22 possible.

23 Also, ladies and gentlemen, during the course of
24 the trial, you'll be coming in each morning, leaving each
25 evening, you'll be in and around this courthouse and on the

1 front steps and the sidewalks coming and going. There are
2 going to be times when you're going to pass in close contact
3 to some of these lawyers, some of these witnesses, some of
4 these corporate representatives.

5 I want you to understand when that happens, they're
6 not going to speak to you. Some of you may have walked up
7 on a group of lawyers this morning who then turned around
8 and walked away when you came up. That -- that is going to
9 happen. If it -- if you come in contact -- close contact
10 with them, they're not going to talk to you, they're not
11 going to say good morning, how are you, how was your night
12 last night. They're not going to be the friendly,
13 gregarious, open people that most Texans are. And the
14 reason they're not is because I've instructed them not to.

15 Again, it all goes back to that very
16 foundational -- foundational principle that the only
17 information, the only communication, the only input of any
18 source you should have regarding anything related to this
19 trial must come in open court under oath from the witness
20 stand.

21 So when the lawyers walk past you in the morning
22 and don't stop and visit, when you pass them on the front
23 steps over the lunch break and they just walk right by, do
24 not think they're being rude, do not think they're being
25 unfriendly, do not hold it against them in any way, they're

1 simply doing what I've instructed them to do. And you need
2 to be aware of that.

3 All right. Ladies and gentlemen, with those
4 instructions, I'm going to release you for lunch. I'm going
5 to ask you, as I've said, to be back in the jury room a
6 little bit before 1:00, and we'll try to start as close to
7 1:00 o'clock as we can. Follow all my instructions.

8 And with that, ladies and gentlemen, you are
9 excused for lunch.

10 COURT SECURITY OFFICER: All rise for the jury.

11 (Jury out.)

12 THE COURT: All right. Be seated, please.

13 Who might I expect to give opening statement for
14 the Plaintiff?

15 MR. ALPER: Your Honor, I will.

16 THE COURT: All right. And who's going to give the
17 opening statement for the Defendant?

18 MR. BETTINGER: Your Honor, I will.

19 THE COURT: All right. Are there any questions
20 from either Plaintiff or Defendant before we recess for
21 lunch?

22 MR. ALPER: No, Your Honor.

23 MR. BETTINGER: No, Your Honor.

24 THE COURT: We stand in recess until 1:00 o'clock.

25 COURT SECURITY OFFICER: All rise.

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(Recess.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes

SHELLY HOLMES, CSR-CRR

OFFICIAL REPORTER

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Date 6/5/17